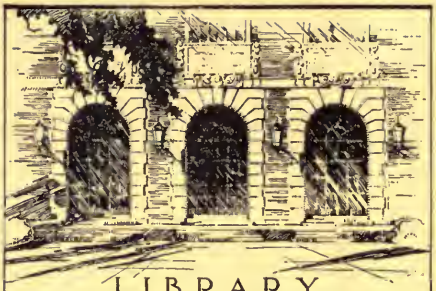

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Message of Gov. Yates of Ill. with accompanying documents, Jan. 1865

Catalogue of Ill. Normal University June 1864

Do. Do. " 1865

Reports State Treasurer Illinois.

School Law of Indiana 1861

Do. Do. California 1866

MESSAGE

OF HIS EXCELLENCY,

RICHARD YATES,

GOVERNOR OF ILLINOIS,

TO THE

GENERAL ASSEMBLY.

JANUARY 2, 1865

SPRINGFIELD:
BAKER & PHILLIPS, PRINTERS.

1865.

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MESSAGE.

Gentlemen of the General Assembly:

INTRODUCTION.

In delivering to you the last message which it devolves upon me, as the executive of the State, to communicate to the General Assembly, I feel it to be our first duty to render thanks to Almighty God for the continued protection and goodness of his Providence, for the abounding blessings with which He has favored us as a State, and for the continuance to us, unimpaired, the possession and enjoyment of our civil and religious liberty. For though a sad and waasting war has prevailed in the land, and thousands of homes and hearthstones have been made desolate, our government has been preserved to us, our nationality has been maintained unbroken, and our free institutions have come out of the shock of battle, not only not destroyed, or impaired, but stronger, and dearer to us than ever before. The storms of revolution, which have so rudely beat around the tree of liberty, have served only to deepen its roots and strengthen its trunk, and the people at home stand reassured with new and unfaltering confidence in our institutions, while foreign nationalities are forced to pay the tribute of involuntary respect to a people who, true to the memories and traditions of their fathers, and faithful to the sacred trust of liberty committed to their care, stand unappalled by the dark events of the gigantic war in which they have been engaged.

As a State, notwithstanding the war, we have prospered beyond all former precedents. Notwithstanding nearly two hundred thousand of the most athletic and vigorous of our population have been

withdrawn from the field of production, the area of land now under cultivation is greater than at any former period, and the census of 1865 will exhibit an astonishing increase in every department of material industry and advancement; in a great increase of agricultural, manufacturing and mechanical wealth; in new and improved modes for production of every kind; in the substitution of machinery for the manual labor withdrawn by the war; in the triumphs of invention; in the wonderful increase of railroad enterprise; in the universal activity of business, in all its branches; in the rapid growth of our cities and villages; in the bountiful harvests, and in an unexampled material prosperity, prevailing on every hand; while, at the same time, the educational institutions of the people have in no way declined. Our colleges and schools, of every class and grade, are in the most flourishing condition; our benevolent institutions, State and private, are kept up and maintained; and, in a word, our prosperity is as complete and ample as though no tread of armies or beat of drum had been heard in all our borders.

I submit herewith a statement of the permanent debt, funded and unfunded, of the State.

There has been purchased and paid off by the State, with the Central Railroad Fund, from December 1, 1862, to December 15, 1864, State indebtedness, as follows:

Principal.....	$875,988 41
Interest, arrears of interest, etc.....	30,158 98
	$906,147 39
10 per cent. paid on registered canal bonds, by Canal Trustees, installments July, 1863 and July 1864, 5 per cent. each.....	289,133 33
	$1,195,280 72

PERMANENT DEBT, FUNDED AND UNFUNDED.

Statement, showing amount of different classes of State indebtedness outstanding, Dec. 16, 1864:

Illinois Bank and Internal Improvement stock,....	$31,000 00
Illinois Internal Improvement stock,.....	42,000 00
Internal Improvement scrip,.....	19,570 33
Liquidation bonds,.....	234,650 21

New Internal Improvement stock	1,848,407 85
Interest bonds, 1847,	1,206,836 96
Interest stock, 1857,	701,404 75
Two certificates for arrears of interest,	1002 58
Refunded stock,	1,837,000 00
Normal University bonds,	65,000 00
Thornton Loan bonds, (act app. Feb. 21, 1861),	182,000 00
Balance Canal claims, under Thornton Loan act,	3624 58
War bonds,	1,679,100 00
Illinois and Michigan Canal bonds, payable in New York,	1,618,000 00
Illinois and Michigan Canal bonds, payable in London,	1,631,688 89
Interest certificates, Canal stock, not registered,	17,661 33
Canal scrip, signed by Governor,	2616 97
121 Macallister and Stebbins bonds, which, according to statement of C. Macallister, would amount, Jan. 1, 1865, to about	57,000 00
	$11,178,564 45

STATE DEBT.

Since December 1, 1862, in addition to the regular semi-annual payments of accruing interest on the State debt, the following amounts have been liquidated, with the proceeds of the fund derived from the Illinois Central Railroad, viz:

Refunded stock of 1860, redeemed under the Governor's proclamation of September 28, 1863, including accrued interest on the same,	$68,507 50
State bonds, purchased at par, canceled and deposited with the Auditor, the principal and interest of which amount to	706,182 12
Scrip, coupons, etc., paid off at par, under the act of February 22, 1861,	23,643 36
Amount of principal and interest extinguished with the Central Railroad fund, from December 1, 1862, to November 30, 1864,	$798,332 98

In addition to this, a further amount of $107,815 42, of the same fund, has been used in the purchase of State indebtedness, since December 1st, making, in the whole, $906,148 40 of the public debt extinguished in a little over two years. The amount derived from the two-mill tax, on the assessment of the year 1863,

applicable to dividend on State indebtedness, presented to the Auditor January 1st, 1865, is some six hundred thousand dollars. This, added to the amount extinguished with the Central Railroad fund, makes an aggregate of one and a half millions of payment on the debt of the State, since December 1, 1862. And the indications of increased receipts from the Central Railroad, and from the two-mill tax, are such as to warrant the belief that at least one million of dollars, per annum, will be hereafter realized from these two sources.

RECEIPTS FROM THE CENTRAL RAILROAD.

The amount received from the Central Railroad, for the seven per cent. on the gross earnings of said company, of the past two years, has been as follows:

For the six months ending April 30, 1863.....	$126,634 83
For the six months ending October 31, 1863.....	173,759 75
For the six months ending April 30, 1864.....	170,055 08
For the six months ending October 31, 1864.....	235,458 96
	$705,908 62

It will be seen that the amount received for per centage on the earnings of 1864 is more than one-third larger than that for 1863.

REVENUE—RECEIPTS AND EXPENDITURES.

The receipts into the treasury for revenue purposes, for two years, ending November 30, 1864, have been $497,616 11; of which amount $109,547 64 was received for tax levied in the year 1862, and $315,088 46 for tax levied in the year 1863; the remainder of the amount received being from miscellaneous sources. The amount in the treasury, December 1, 1862, was $374,697 19, which, added to the amount received, makes an aggregate of $872,303 30.

The amount of warrants drawn against this fund, from December 1, 1862, to November 30, 1864, is $884,014 97, and the amount of the same outstanding, unpaid December 1, 1864, as appears from the Auditor's report, was $20,510 98. It will be seen that a continuation of the expenditures, in the same ratio, as for the past two years, and of the receipts from taxation, as for the collection for 1863, will result in a deficiency of the receipts, as compared

with the expenditures, of more than one hundred thousand dollars per annum; and this, without considering the greatly enhanced prices necessary to be paid for all articles purchased for the use of the State, and of all services rendered, except such as the compensation for which is fixed in amount.

The rate of tax now levied for revenue purposes is one and one-fifth mill on the dollar of valuation, producing, for the year 1863, (as before stated) $315,088 46 of actual receipts at the treasury, whilst one-half of the amount expended in two years will be found to be $442,007 48. The conclusion is obvious that an increase of taxation or a reduction of expenditures is of absolute necessity.

COLLECTION OF TAXES.

The act of the last General Assembly authorizing the collection of taxes in legal tender notes and postal currency expired, by limitation, on the 1st of January, 1865, thus leaving the act of 1853 in force; which act requires payment of taxes in gold and silver. I presume that no argument is needed to show that a re-enactment of the law authorizing payment of taxes in United States notes is a matter not only of public policy but of absolute necessity.

APPROPRIATION ACT OF FEBRUARY 14, 1863.

The act of the last General Assembly, approved February 14, 1863, entitled "An act to provide for the ordinary and contingent expenses of the government until the adjournment of the next regular session of the General Assembly," and containing provisions for the payment of the incidental and contingent expenses of the government and of the different State departments, clerk hire of the different State officers, etc., and in aid of sick and wounded Illinois soldiers, has been pronounced by the Supreme Court to be void. Previous to the rendering of this decision several warrants had been issued by the Auditor, for purposes contemplated by said act; none of which have been paid. In fact, the decision of the Supreme Court was rendered in suits brought against the Treasurer, with the view of compelling him to make payment of said warrants. All these warrants were regularly issued by the Auditor, on accounts for services actually rendered and articles actually furnished; and all of the same should right-

fully be paid. The aggregate amount of such warrants is less than seven thousand dollars. The cost of clerk hire and incidental expenses of the several State departments have been borne by the State officers, from private means, for the past two years; and I would therefore recommend the re-enactment of the law, with a provision legalizing the warrants outstanding, and requiring the State Treasurer to treat the same, in all respects, in like manner with warrants issued under other laws.

It will be recollected, in this connection, that in June, 1863, a disagreement having occurred between the two Houses of the the General Assembly as to the time of adjournment, I availed myself of the power vested in me by the constitution, to prorogue them. Seeing, as I supposed, a disposition to embarrass the government in the prosecution of the war, and a refusal to make the necessary appropriations to carry on the State government, and provide aid for the relief of our sick and wounded soldiers, and also to interfere with the prerogatives of the State Executive, I deemed it my duty to avail myself of the contingency which the constitution placed in my hands, of rescuing our noble State from obloquy, by a prorogation of the General Assembly. It will be seen, however, that such a necessity, and the subsequent decision of the Supreme Court, declaring the said law, making the contingent appropriations aforesaid void, devolved upon the State authorities the alternative of raising the means necessary to carry on the government, by advances from private citizens, which would necessarily be large, by reason of greatly increased service and expenditures in every department of the government, growing out of the complications of the war. I therefore recommend the re-enactment of the said law, with a clause for adjusting and paying all accounts for expenditures incurred, as above stated, to be audited by the Auditor, and warrants issued, upon the approval of the Governor.

I herewith submit a report of the expenses incurred in my office, and other necessary expenses, incurred according to the intent of said appropriation.

Much credit is due to liberal and patriotic citizens of Chicago, Springfield and Knox county, for advances made by them so generously to the State, in its emergency.

ARMY AUDITING BOARD.

I submit herewith the final report of the Board of Army Auditors, appointed under the "Act creating a war fund and to provide for auditing all accounts and disbursements arising under the call for volunteers." It embodies a detailed statement showing the dates of all claims filed, names of the parties filing the same, their amounts, what for, and amounts allowed; also the amount of claims rejected, suspended, withdrawn, barred, etc. The report is valuable, and should be published.

BARRED WAR ACCOUNTS.

Under the fifth section of the act of May 2, 1861, creating a war fund, and providing for auditing accounts of war expenses, all claims for such expenses were required to be presented for adjustment within three months from the accruing of the same—in default of which, such accounts were required to be "considered donated to the State, and not thereafter allowed, under any pretense whatever." This provision of the law has, in many instances, worked very great hardship. Many persons furnished articles, and rendered service, in utter ignorance of this provision of the law, and others were ordered away from the State, in the military service, and had not the opportunity to present their claims until long after the three months had expired.

The Board of Commissioners, wishing to do all that lay in their power to facilitate the collection of claims which they considered meritorious, have examined and passed upon a considerable number of such claims, and have stated that they would have allowed the same for payment, but for the limitation made in the law. I would recommend that the Auditor be authorized to issue warrants in payment of such accounts as were so passed upon by the Commissioners, the same being first approved by the Governor. The accounts so passed upon are now on file in the Auditor's office.

THE PHYSICAL RESOURCES OF OUR STATE.

The physical resources of a State are the foundation of all others. They make it great or little. They shape its destiny. They even affect its moral and religious character. History teaches this truth. All the great nations of ancient and modern times demonstrate it.

Egypt, Syria, Greece, Rome; Great Britain, France, the United States, are so many proofs that favorable physical situations and resources are absolutely necessary to material and moral development. Illinois, in this respect, stands pre-eminent among the States of the Union. She is the heart of the Northwest. In agricultural resources she is unsurpassed. In manufacturing and commercial facilities she has no superior. On the east, south and west, the Great River of the continent and its tributaries water her border counties, while their branches penetrate to every part of the State, irrigating her soil, draining her low lands, and affording water power for her manufactures. The Illinois river runs for over two hundred miles through the State, from northeast to southwest, forming a natural highway between the lakes and the Mississippi, the key of which is entirely in our possession. This highway is one of the most important of the physical resources of the State; while, in a military point of view, it enables us to dominate the lakes on the one hand, and the Father of Waters on the other. A State, holding this great water-way, must always be a power on the continent, as well as in the Union. Then, we have, on the northeast, an outlet to the ocean through the great lakes, those inland seas of the continent; while that one of them, Michigan, which laves our northeastern border, is almost land-locked, and thus the least liable to hostile incursions from foreign powers. This secures to us the site for a naval depot, for dock-yards, for the building and repair of vessels, for foundries for cannon, for workshops for all descriptions of war material, at some point on Lake Michigan, between the Wisconsin and Indiana State lines. Our State is also on the direct route of the Pacific railroad, which must intersect it from east to west; thus making it a portion of the great highway between Europe and the Indies. Then, again, all our lines of communication, from the interior of the State to shipping points connected with tide-water, at which bulky articles of merchandise or agricultural products can be received or delivered, are short. This saves the cost of lengthy transportation of such articles by railway, which must always be expensive. At present, in some of the States to the west and northwest of us, large quantities of grain have been stored on the navigable rivers for the last two seasons. On account of low water it cannot be sent to market by steamboat, while the cost of railway transportation would eat up its value. This can never be the case in Illinois, as long as

water runs in the Mississippi, and that of the great lakes flows unobstructed to the sea. But not alone do we possess agricultural resources of an almost unlimited character: we have also within the limits of our State, facilities for manufactures, which equal those of nearly all the other States of the Union combined. Beneath the surface of our blooming prairies and beautiful woodlands are millions of tons of coal, easy of access, close to the great centers of commerce and manufactures, on great navigable rivers, and intersected by railway facilities of the best description.

Illinois, in 1860, was the fourth State in the Union in the number of tons of coal produced. But what has been produced bears no comparison to what may be. Our State Geologist assures me that in a single county in this State there are a thousand millions tons of coal awaiting the various uses to which the civilization of the future will apply it. It will thus be seen that Illinois possesses within itself the physical resources of not only a great State, but a great nation.

But if Providence has been bountiful in the natural resources of the State, it is necessary that man must be able and willing to use them to advantage; that he must have the capacity both to discern the capabilities of our situation and turn them to the advantage of our own and the people of other climes and countries. While, as I have shown, the physical resources of a State are the foundation of all other, it is also true that the people of a State must be equal to the demands and requirements of its physical capabilities. The most favored situation may be thrown away on a degenerate or incapable people. But, happily, we not only possess the physical resources of a great nation, but the mental and moral capacities of a dominant and progressive race. All it needs, then, for a proper development of our resources is, that our efforts be well directed; that we organize and direct labor, to the end that the greatest amount of development may be attained by the least possible expenditure of brute force; that by combination of effort, by organization of industry, by bringing into harmonious working development the three great branches of human industry—agriculture, manufactures and commerce—we may so weld each apparently hostile but really mutually dependent interest, into such a symmetrical whole, as to produce the most perfect social system. And this has been the aim of philosophy and statesmanship since the world began. But it can only be attained by the triumph of mind

over matter; by a continual progress, in which the apparently inert forces of nature are made to subserve the highest uses of man.

The war now being waged has tended, more than any other event in the history of the country, to militate against the Jeffersonian idea, that "the best government is that which governs least." The war has not only, of necessity, given more power to, but has led to a more intimate prevision of the government over every material interest of society. By creating a large debt, it has necessitated an extended and elaborate system of taxation. This system takes note of every man's business, its profits and its probable future increase, so that the State may know what revenue it has at the present time and what it may depend on in the future. But, by creating a large debt, the war has also created a means of stimulating the industry of the country. It has created a credit, in the shape of public securities, which is so much banking capital for the industry of the nation, and forms a sure basis for creating more wealth through all the ramifications of industry. A merely agricultural country, such as the ideas of the great minds of the earlier period of the democratic party believed to be the *ultima thule* of the social state, never could sustain the immense debt which we are compelled to provide for. It is only through the enlargement of the manufacturing and commercial industries of the country that it can be borne. But through those it can be made that which the people of Great Britain proudly call theirs: "a great national blessing." It can be made to enlarge, strengthen, and place upon an enduring basis of prosperity, those great material interests of the country, which are the pride as well as the distinguishing features of every civilized nation. It will be the development of manufactures and commerce to the highest possible point, which will finally rescue the present social state from the many evils which accompany it, and usher in the millenium day of true social and political equality. While I cannot say that I desire a large national debt, yet, as we are to have it, we can console ourselves that while a large debt has its disadvantages it also has its compensatory blessings. It brings the government nearer to the individual. It makes the man recognize himself as part and parcel of the State. He supports it, and he feels that it is bound to protect him. The man who pays twenty dollars of a school tax expects that his children will receive a proper education. The manufacturer, or farmer, or merchant, or ship owner, who pays his taxes

on his particular branch of industry, justly expects that that industry will be fostered and protected. It is true that a great national debt binds us more closely as a people—makes us realize the great benefits of a government, while it causes us to feel its burdens. All duty is reciprocal. "With whatever measure ye mete, it shall be measured to you again."

But it is to our debt, as a means of stimulating our industrial interests, that I particularly desire to call your attention ; because it lies in your power to provide the means through which those interests can be enlarged and extended. We must utilize the credits of the State and nation, if we would keep pace with the progress of other states and peoples; if we desire to bear our share of the burdens of the present war; if we hope when the white-winged messenger of peace shall glad a distracted country, to provide employment for the thousands of our "gallant boys in blue," who are now braving the storms of battle on many fields, when they return to the peaceful avocations of industry. We must encourage the formation of corporations for extending agriculture, manufactures and commerce. We must mobilize capital, so that it shall not be "buried in a napkin," but shall earn for itself the ability to increase, and, by such increase, stimulate industry and re-create itself. I feel deeply on this subject, because, from a careful study of the condition of our national finances, I am irresistibly led to the conclusion that, in order to pay the interest on our debt and carry on the war to a triumphant close, it is absolutely necessary that the resources of the nation should be enlarged and extended. The labor and capital of the country are the bases and sources of all its wealth. It is possible that these may be overtaxed, and thus eventually permanently contracted into narrower channels ; but it is not possible, with such vast material resources as are possessed by our favored land, that the former can ever be too widely extended or too minutely varied, or that the latter can be too greatly increased or too widely diffused. Where would our State be now, as to agricultural, manufacturing and other resources, or even military power and prestige, if the internal improvement system, of which the lamented Gov. Duncan was the able and persistent advocate, had been entirely neglected, and the Empire State of the Northwest allowed to vegetate in the imperfect condition of a merely agricultural and pastoral state ?

AGRICULTURAL, MECHANICAL AND COMMERCIAL BUREAU.

In connection with the above subject, and for the benefit of the industrial interests of the State, I would respectfully recommend the creation of an Agricultural, Mechanical and Commercial Bureau of Statistics. This would be a highly useful department of state government, as well as a great assistance to immigration. But this is but a small part of the benefit it would confer. The nation is passing into a new era of its existence. Old forms must be abandoned, and enlarged views of the principles of government accepted. The garments of the youth are too contracted for the man. With increasing and varying industrial pursuits, the people demand increased duties on the part of the State. At present, corporations, representing special interests, take upon them duties which properly belong to the State at large. Thus the only statistical tables are those prepared by the Chambers of Commerce of our cities, or by corporations interested in a special branch of industry. These tables are, of course, but partial representations of the condition of the industrial interests of the State. We should have a Bureau, which would prepare statistics and present facts regarding all the industrial interests of the State, agricultural, mechanical and commercial. These would be of use, not only to the farmer, the manufacturer and the merchant, but to the statesman and social economist. A short time since, when a distinguished foreign statesman requested to see a compilation of the social and industrial statistics of the State, it was a matter of embarrassment to me, when compelled to inform him that there was no such work in existence. Such a work would be more highly useful than most persons are apt to imagine. It would enable the merchant to regulate the quantity of his stocks, the farmer to fix his prices, the manufacturer to determine his wants, and the statesman to draw up the most comprehensive and least oppressive system of taxation. As we now stand, in this respect, all these things are done at haphazard. The consequence is, a loss of time and money, and, very often, our people are driven from certain markets and overstock others, through ignorance of the particular wants and necessities of the country, and the quantity of merchandize needed to supply them. Suppose the statistical tables of the State showed that Illinois possessed a certain quantity of corn in her cribs and store houses, would not this fact draw buyers from all parts to invest in the

cheapest market, and not leave the people subject to a few monopolists? And so with other articles. The diffusion of knowledge on the state of the markets is one of the best safeguards to the great mass of the people against the chicanery and fraud of speculators, monopolists and middle-men generally. To protect the weak against the encroachments of the strong, is one of the primary objects of government. For these and other reasons, I earnestly recommend the establishment of a Bureau of Statistics, to be presided over by a Commissioner practically familiar with the great industrial interests of the State.

GEOLOGICAL SURVEY.

This work has now been in progress nearly seven years, under the charge of the present director, and his reports, embracing the results of the labors of the Geological corps employed in the survey, have been, from time to time, presented to the proper authorities for publication. A voluminous report is now ready, embracing the general result of all the labor performed up to the present time, with about fifty plates of illustration, besides the necessary maps and geological sections, which have been executed in a manner highly creditable to the artists who have been employed in this department. It is greatly to be desired that some provision should be made by the Legislature, at its present session, for the publication of this work; for, although the responsibility is thrown on the Executive, by the law organizing the survey, there is no special provision in that law for placing at my disposal the means necesary to defray the expenses attending it.

For further information in relation to the present condition of this work, I refer you to the "Report of Progress" of the State Geologist, which is herewith submitted, and to my former messages, in which this subject is more fully presented.

THE PENITENTIARY.

Since my last message, the work upon the State Penitentiary has gone on vigorously, and gratifying progress has been made. But the appropriation voted by the last Legislature for the finishing of this institution, and which, at the time, was believed to be sufficient, has been exhausted, leaving some important and necessary portions of the work still incomplete. The usual detailed reports

of the officers of the penitentiary have been received by the Auditor, and will be duly submitted to the Legislature. The commissioners present a statement of the management of the institution, and of expenditures upon it during the last two years, and state its future needs. It will remain for the Legislature to do, in its wisdom, what shall be thought best to preserve and promote this great State undertaking.

As it has been charged by a portion of the press of the State that the lease of penitentiary convicts made to James M. Pittman, at the session of June, 1863, was a fraud upon the State, and that the interests of the State, as well as the discipline of the convicts, very materially suffer under the present management, I deem it my duty to recommend the General Assembly to institute a thorough investigation of the charges made, and into the management and discipline of the penitentiary. The almost complete absorption of my time by the military affairs of the State has prevented me from giving that attention to the subject of the discipline and well-being of the convicts as I, under other circumstances, should have done.

The object of punishment is not only to deprive the offender of the opportunity of committing further crime, and to deter others from its commission, but also a most important object is the reformation of the offender, especially where, after his release, he is to go back and become a member of society. After conferring with those who have had experience on this subject, I am fully satisfied that there should be, as we have at the head of our State benevolent institutions, some general superintendent of every such institution; a man of the highest moral character, of practical wisdom and business talent, who should be responsible for the entire control of the penitentiary. He should appoint the guards, clerks, stewards, and all the inferior officers; he should regulate the police, arrange the discipline, appropriate the funds for the necessary expenses, transact the business of the prison, either by agents, clerks, or contractors, and always have the control of the convicts. He should have a fixed salary, and not a per centage on the profits. Secondly, the warden should have the general care of the convicts in his charge; also, superintendence of the guards and of the police. He should not be in any way interested in the business of the prison, except to oversee the men in their labor, and discipline

offenders under rules laid down by the general superintendent. He should also have a fixed salary.

A liberal appropriation should be made for the maintenance of an efficient chaplain—one who should have the moral and religious care of the men; the regulation of their religious services; should select books for the library, (for which purpose a liberal appropriation should be made;) be allowed to write letters for the convicts; and should have free access to the prisoners and the hospital. And here I must say, in most emphatic terms, that the fact that the State allows only five dollars per week to the chaplain of the State, and where there are six hundred convicts, is a disgrace to the State, which this Legislature, I trust, will wipe out, and give to the chaplain a salary of not less than one thousand dollars per year. Also, as not one dime is allowed for newspapers, I recommend that at least one hundred dollars be appropriated for newspapers, to be selected by the superintendent, and circulated among the convicts.

The province of the physician should be to administer to the infirmities of the convicts, and be responsible to the general superintendent for his care and attention.

Such, generally, in my humble opinion, should be the outline of the penitentiary management. I have no hesitation in suggesting that some such system, perfected by men of practical wisdom and experience, would result in vast saving to the State, and largely promote the welfare of the unhappy multitudes thrown upon its care, and lead to many permanent reformations of the prisoners. All the dictates of humanity require that particular attention should be given to this important subject by the members of the General Assembly. I refer you to two interesting communications from the present and former chaplains, transmitted herewith.

EDUCATION.

For a view of the progress and present condition of the common and Normal schools of the State, I refer you to the report of the Superintendent of Public Instruction, and invite your attention to the necessity of making provision for the immediate expansion and more perfect development of the system. The grand procession of events, political and military, which crowd the present, must not blind us to the inexorable demands of the future. No lesson of

this historic period is being more impressively taught us than this: that under a constitution like ours the whole people must be trained to a just conception of their rights as men; of their duties as citizens; and of their sacred obligations as patriots. This, in theory, is the end sought by our system of free schools, and very great progress has been made. But the time has come when a vast accession must be made to the educational forces of the State. Ten years have brought us to a new era, demanding new agencies, new measures, and a more comprehensive, aggressive and liberal educational policy. More money must be appropriated, more men must be employed, more forces organized and put in operation. The progress of events has superannuated the scale of operations upon which our free school system was inaugurated. What did very well in 1855, will not do for 1865.

Much of the machinery of common schools needs to be simplified, reorganized and perfected; temporary schools of instruction for teachers must be organized and conducted, at suitable points, throughout the State; the changeless laws of mental growth and action must be proclaimed to the people everywhere, that they may be able to estimate the difference between right and wrong methods of teaching—the priceless blessings of good teachers and schools, and the worthlessness of bad ones; the duty of obedience to hygienic laws in the management of schools, must be inculcated, that we may have a generation of youth sound in body as well as in mind; a spirit of taste and beauty must be diffused until the chaste and attractive, though simple and uncostly, designs of modern improved school architecture shall be substituted for the monotonous deformity which now prevails in most of our rural districts; in a word, the people must be led to understand the true idea and end of education itself—*why* men should be educated, and *how* they should be educated, as set forth with unanswerable power in the last biennial report, to the end that they may see the inevitable abyss into which a republican government must ultimately plunge without intelligence and virtue co-extensive with the franchises of the citizen under the constitution.

To realize these grand aims, the resources of the central educational office of the State must be increased, both in men and means. It cannot be done by the Superintendent, confined to his office, for lack of clerical help, with no traveling fund and no competen assistants. It can only be done in Illinois as it has been done in

Massachusetts and other eastern States, and as it is being done in Michigan, Wisconsin, and other western States, by a liberal appropriation for State Institutes and for the State Department of Public Instruction, that the living heralds of these great educational principles may go forth among the people. Proper legislative action is of course necessary, but if our school laws were as perfect as inspiration itself could make them, they would be powerless to achieve the desired end without the living agency of qualified, experienced men. The salary of the State Superintendent should be increased to an equality, at least, with that of the Principal of the Normal University, and he should be allowed at least two assistants, with salaries sufficient to command the very best educational experience and ability. The compensation of the head of the Normal School is not too large, and should not be reduced; but no good reason can be given why the head of the whole system should receive only three-fifths as much (which is now the fact) as the presiding officer of an institution which is but a unit in that system. A comparison of the duties and responsibilities of the two positions would justify no such disparity of compensation. Much is said about the necessity of economy in public expenditures. No man shall be before me in acting upon that principle. I advocate liberal appropriations for educational purposes *because it is the only true economy*, in the long run. No investment will prove more profitable on final settlement.

The Normal University, under its present very able administration, is more than fulfilling the most sanguine expectations of its founders and friends, and should be regarded with just pride by every citizen of the State. Its halls are literally crowded with students from all parts of the State. It is doing a great and good work. I commend it and its interests to the confidence and favor of the Legislature.

In dismissing thus briefly this great public interest, I proclaim it as my belief that no other should receive more serious attention and enlightened action at the hands of this General Assembly. The character of our future as a State and people will depend more upon the educator than the politician. It is a disgraceful fact that this great State, so matchless in all the elements of material wealth and power—so illustrious in her record of heroism and devotion to the Union—so soon to exercise, by her position and character, a controlling influence in the councils of the nation—this great State

is among the most meagre and inadequate of all the free-school States of the Union in the endowment of her State Department of Education. I trust that this will be so no longer. We cannot *afford* to neglect these interests.

CONGRESSIONAL GRANT OF LANDS FOR EDUCATIONAL PURPOSES.

It will be remembered that Congress, by act approved July 2, 1862, donated to the several States, under certain conditions, public lands, or scrip for the same, in the proportion of thirty thousand acres for each senator and representative in Congress, the proceeds of the sale of which, or the land scrip to be issued therefor, is to be invested in stocks of the United States, or of the States, or some other safe stocks, yielding not less than five per cent. upon the par value of said stocks, and to constitute a perpetual fund, the interest of which is to be inviolably appropriated to the endowment, support, and maintenance of at least one college in each State, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agricultural and mechanic arts, in such manner as the Legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life; also further providing that any State which may take the benefits of the provisions of the act, shall provide, within five years of the date of such act, at least one college, as described in the act, or the grant to the State to cease, and requiring the State, by its Legislature, to express its acceptance of the provisions of the act within two years after the date of its approval. The latter provision has been carried out by the act of the last Legislature accepting the donation, but no steps were taken to carry into effect the provisions requiring the establishment of a college, and it is for you to take such action as will secure to our State the benefit of this valuable grant.

This brief synopsis of the general features of the act of Congress, will enable you to understand more fully the position which this State, by the action of the last Legislature, occupies in reference to the subject.

Pursuant to the acceptance, and after being duly notified thereof, the Secretary of the Interior has placed in my hands land scrip for the location of four hundred and eighty thousand acres. There being no public lands within the limits of this State subject to private

entry, upon which said scrip can be properly located, it becomes the duty of the General Assembly to provide by law, for its sale and investment of the proceeds thereof in stocks, as contemplated and required by said act of Congress. There remains but a little more than two years within which time the State must comply with the provisions of the act, and to establish a college or colleges for the purposes specified, or the grant, as to this State, is to cease.

The shortness of the time, the importance and magnitude of the enterprise, its effects upon the educational interests of the State, and the variety of great questions involved, justify me in calling your special attention to the subject at this time. I therefore advise that a commission be appointed, charged with the duty of carrying out the provisions of the act of Congress, under such safeguards as your wisdom may suggest and approve. No part of the fund arising from this grant can be appropriated to the erection or repair of edifices or buildings, and it therefore becomes necessary for the General Assembly to provide for the same within the time limited by the act of Congress. Doubtless there are many localities within the State, which would undertake to furnish the requisite buildings and structures for such an institution without cost to the State, in consideration of the local benefits they may be supposed to derive from the same; and I, therefore, recommend that the appointment of a commission, to locate said institution, be provided for by act of the General Assembly, and that the powers and duties of said commission be so specified and defined as to insure a due consideration of the best interests of the cause of industrial education, in its relation to the whole people of the State.

At the fair of the State Agricultural Society, held during the month of September last, this subject was ably discussed, by the farmers and mechanics present, at a series of conventions called for the purpose. The views and suggestions, will be submitted to you by the committee appointed at that time, together with the draft of a bill, embodying the views of the agricultural and mechanical interests represented at said fair. The eminent qualifications of the gentlemen composing this committee, for determining what would be to the best educational interests of the mechanical and agricultural classes, as well as the respectable and prominent standing which they occupy in society, entitle their recommendations to your most favorable consideration. A committee, also representing

the views of the mechanics of Chicago, will lay a communication before you, which, with any other communications on the subject, will, I trust, receive your careful consideration.

It is needless for me to add, that to this General Assembly is committed this great and sacred trust, in which not alone the present, but future generations of this State are deeply interested. If it is economically and wisely administered, it will be a source of great blessings, and will reflect credit upon this General Assembly, upon whom has devolved the important responsibility of devising the best mode for carrying out the great purposes of its creation. There are other features of said act of Congress which should be responded to by legislation on the part of the General Assembly, but which need not be enumerated. The whole subject, freighted as it is with the most important hopes and promises for the future of our young and growing State, I leave in your hands, trusting that in whatever may be done, the rights of the farmers and mechanics, for whose benefit this munificent donation was made, will be fully regarded.

A REGISTRY LAW.

The elective franchise is a distinguishing feature of our republican system. The legislation of the country, its policy and its institutions, are determined by the majority of the legal voters of the state or nation, and the mode of ascertaining that majority is by the ballots of the voters deposited in the ballot box. In the absence of any guards or restrictions thrown around the ballot box, a fair expression of the will of the majority may be defeated by illegal voting. It is but too often the case that corrupting influences are brought to bear upon voters who, from mercenary considerations, or under political excitement, are led to vote oftener than they are entitled, and who lack the requirements of age, residence, or other qualifications required by the constitution and laws. It is sometimes the case that men who plead exemption from military service, and claim the protection of foreign governments in case of a draft, are yet among the first to claim and exercise the right of suffrage at the polls. Again, instances are known of unworthy citizens who go from place to place, casting their votes under assumed names, wherever, through the oversight or political connivance of the judges of the election, they can have them received. To prevent such

practices, I recommend the passage of a stringent registry law, requiring the name of each voter to be recorded for a given number of days previous to such general election. The time should be sufficient to secure an investigation into the qualifications of the voter in every doubtful case. Laws of this character have been found to operate well and meet the approbation of men of all parties who desire to maintain the purity of the ballot box.

BLACK LAWS.

Of the black laws I have but little to say, except to recommend that you sweep them from the statute book with a swift, relentless hand. My opinion of them cannot be better expressed than in the language of a resolution, which as a member of the General Assembly in February, 1849, I had the honor in a feeble minority to advocate, "declaring the laws of the State, applicable to negroes and mulattoes, tyrannical, iniquitous and oppressive upon this weak, harmless and unfortunate class, and unbecoming the statutes of a free, magnanimous, enlightened and christian nation." They were originally enacted to gratify an unjustifiable public prejudice against the friends of liberty, and an inhuman feeling towards a poor, unfortunate class of our fellow citizens. They assumed a fact, which, to the honor of the Jeffersonian ordinance of 1787, never existed, that slavery did or could exist in the free state of Illinois. Section 9 of these laws provides that "if any slave or servant shall be found ten miles from the tenement of his or her master 'without a pass,' he may be punished with stripes not exceeding thirty-five"—thus by the phraseology of the law recognizing the existence of the institution of slavery within our borders and prescribing an infamous punishment. It is unconstitutional, as decided by the Supreme Court in this State, "in attempting to legislate upon the subject of the rendition of fugitive slaves to their masters, over which subject the court decides that Congress has supreme and exclusive power." It authorizes a system of slavery, by providing that every colored man who shall be found in this State "without having *a certificate of freedom*," shall be deemed a runaway *slave or servant*—"to be committed to the custody of the sheriff of the county, who shall advertise him at the court house door," and "to hire him out for the best price he can get," "from month to month," "for the space of one year." Any law, thus placing any man, white or black, in the power of a purchaser, for money, is utterly inconsistent with the

humanity of the age and the spirit of our free constitution. These laws are unconstitutional, because by the laws of many of our States free colored persons are citizens, and the constitution of the United States expressly provides that "the citizens of each State shall be entitled to all the privileges of citizens in the several States."

An examination of the various provisions of these laws will satisfy this General Assembly of their inhumanity, and the humane and philanthropic will everywhere hail their repeal with joyful acclamations.

In reply to those who say that if these laws are repealed we shall have a large influx of free negroes into this State, I have to answer that the laws are now almost a dead letter. Negroes are not kept out of the State by them, for it is only now and then, indeed a rare case, that a man can be found who is barbarian enough to insist upon the application of the penalties imposed by these laws. And upon the subject I cannot present my views better than by the following extract from my message of January 5th 1863. Referring to the emancipation policy of the administration, I say:

"I am sure of two things: First—that when slavery is removed, this rebellion will die out, and not before. Second—I believe and predict, and commit the prediction in this State paper to meet the verdict of my successors in office and of posterity, that the change brought about by the policy of emancipation will pass off in a way *so quietly and so easily*, that the world will stand amazed that we should have entertained such fears of its evils. During the war, there will be necessarily some suffering among so many slaves thrown out of employment, and many, perhaps large numbers of them, will seek a temporary refuge in the free states, and every man who has a human heart within him, will treat them kindly; but with the return of peace, the demand for labor in the south will be greatly increased, and there will be an exodus not only of these fugitives, but of the free colored population to the south. The demand for labor in the south will be greatly increased by the subdivision of large farms into numerous small ones, in the hands of a much larger number of owners; also by the reclamation of immense regions of fertile country in all our southern states, waiting only the plastic touch of free labor, the settlement of which has been retarded by the existence of slavery, tending, as it always has, and necessarily always will, to discourage the immigration of free white

citizens. No reasonable fears of competition with the free labor of the northern states need be entertained, because the emancipated slave will have protection and employment upon the soil which he has heretofore cultivated in bondage. Emancipation does not increase the number of negroes by an additional one. There will not be a single acre of land less for cultivation, but a great deal more will probably be cultivated; there will be the same and an increasing demand for the culture of cotton, tobacco, sugar, and rice, for which the negro is peculiarly adapted; the southern climate will remain unchanged, congenial to his constitution; and it is in the highest degree improbable that the negro will leave the state of his nativity, where his labor is in demand, where he understands, better than any one else, the business to be done, and where the climate is adapted to him, to seek the cold climates of the north, to face the strong competition of northern, skilled free-labor, to encounter the prejudice against his color, and the pauperism and neglect which would meet him on every hand."

I will not say that legislation will not be necessary upon this subject of the residence of free negroes in our midst; but I will say, that whatever is necessary should be free from political prejudice, having regard to the welfare of our own, free, white citizens, and, at the same time, marked with humanity and a due regard to that unfortunate class of our fellow beings whom Providence, in its wise and inscrutible plans, has placed in our care.

SOLDIERS' VOTING.

In my last message I recommended, in strong terms, the importance and justice of an enactment extending to our citizen soldiers, in the field, the right of suffrage, but no action was had upon the same. During the last two years the subject has been fully considered and acted upon in many of the loyal States, and although the constitutions of the States have been framed without reference to a state of war, yet the subject has undergone the scrutiny of the highest judicial tribunals, and the right to take the votes of soldiers in the field has been clearly recognized. Laws passed for this purpose have been carried into operation and found to operate well, without any public injury. I can see nothing in our State constitution which prohibits the passage of such a law. Section 1, Art. 6 of our State constitution, provides as follows: "In all elections,

every white male citizen, above the age of twenty-one years, having resided in the State one year next preceding any election, shall be entitled to vote at such election; and every white male inhabitant, of the age aforesaid, who may be a resident at the time of the adoption of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote, except in the district or county in which he shall actually reside at the time of such election." It is evident, from this clause, that the elector cannot vote in any other precinct than that in which he actually resides.

Section 4, Art. 6 of the constitution of the United States, provides that "No elector shall be deemed to have lost his residence in this State by reason of his absence on the business of the United States or of this State."

Under this latter clause, a minister of the United States to a foreign court, though absent for years, is an actual resident of the district or county in which he resided at the time he left the country, on his mission. The same may be said of the soldier who has left the county or district, because he is absent on the business of the United States, and therefore does not lose his residence. Now, is it reasonable to presume that the framers of our constitution, while thus preserving the residence of the soldier, evidently for the purpose of securing to him the right of suffrage, at the same time meant to prohibit the Legislature from making any provision to enable him to exercise that right? While the elector is required "to vote in the district or county" in which he resides, it is not necessarily required that he is to be present, in person, at the polls, and cast his vote. The object of the framers of the constitution was to preserve the purity of the ballot box, and to prevent the voter from voting more than once, or at more places than one, at the same election. The object evidently was, to provide that his vote should only be cast in the one district or county in which he resided. Now the constitution, and the object of its framers, are fully complied with, when the soldier has cast his vote in his district or county, whether he be present, and cast his vote there in person, or whether the ballot is deposited there by his attorney, under the proper checks and restrictions—as to his qualifications of age, residence, etc.—or whether his vote is taken in the field, in some mode to be provided by the Legislature, and deposited in the ballot box of the district or county in which he resides, as has been provided

in the laws of several of the States. The following plan, with such guards and details as will prevent frauds, is suggested, as a practicable way of effecting the object: The three field officers, or, in their absence, the three ranking officers of each regiment of infantry or cavalry, and three highest commissioned officers, or those acting in their places, of each battery of artillery, or each company or squadron of infantry or cavalry on detached service, might be made the inspectors of the election, with power to appoint the proper person clerk of the election, so that the vote may be taken on the day fixed by the constitution.

There is no way of reaching the case by amendment to the constitution, without disfranchising the soldier for at least two years to come, for the constitution requires that two-thirds of the General Assembly shall recommend to the people to vote for or against calling a convention to amend the constitution, at the next regular election of members of the General Assembly, and that the General Assembly thus elected shall, within three months, call an election for members to the convention. It would require a still longer time to reach the object under the clause which provides for amendment by submitting it as a single proposition. It is therefore plain that if this General Assembly fails to pass a law authorizing our soldiers to vote, these gallant defenders of our homes and liberties must be disfranchised for over two years to come.

I recommend therefore to you, as one of your first acts, the passage of a law providing for taking the votes of our soldiers in the field. Indeed, I will say, decorously however, that failure to protect the rights of the noble men who have left business and property, home and kindred, to preserve to you the enjoyment of this same peaceful right of suffrage, together with all other rights you hold dear, would subject you to the charge of being unfaithful servants to your country. The soldiers are citizens; they are the people of the country; their persons, their families, their property, their rights are as deeply affected by the legislation of the country as those of the citizens who remain at home, in the quiet enjoyment of peace and safety. If the soldier is not worthy to vote, who is? If he who bares his breast to the storm of battle, and bears aloft our flag, against the hordes who are madly striving to tear down our magnificent temple of constitutional liberty; if he shall have no voice in selecting his rulers, who shall? Therefore let this General Assembly signalize its patriotism by this act of

prompt and necessary justice to the gallant citizen soldier of the State.

I would suggest to the General Assembly that, while I do not anticipate an unfavorable decision of the Supreme Court upon an enactment to be passed securing the right of suffrage to the soldiers, yet, in view of any such contingency, proper action should be taken for amendment to the constitution, as the next only mode of securing the object.

WAR RECORD OF ILLINOIS.

CONDUCT OF THE WAR.

Appreciating, before the first gun was fired at Sumter, the determination of treasonable political leaders to inaugurate rebellion, and, when war was actually made against the government, the great preparation made by them for revolt, and the magnitude of the struggle we would be compelled to pass through, I earnestly insisted upon and urged more extensive preparation for the prosecution of the war. The conciliatory policy which looked towards avoiding a bitter struggle, by appeals to the loyal sentiment of the southern States, and the justification in the ultimate rigid prosecution of war, should that fail; thus placing the government in a consistent and peaceful attitude toward foreign nations, and establishing, by long forbearance, the disposition of one section, in the majority and in power, to concede and allay the animosities of the other section, in the minority, and defeated at the ballot-box; also, that if the struggle endangered the existence of the government and Union under our old constitution, that the President, as commander-in-chief of the armies and navy of the Republic, would be justified by the civilized world, and by the trust reposed in him, in waging war, even to the destruction of institutions which endangered the peace of all other nations, and which foreign powers admit, and the majority of our own people had declared, as subversive of the constitution, and dangerous to the existence of the Union. These views are perhaps sound in theory, and may ultimately redound to our credit in historic pages; but I never altogether sympathized with the policy. The events of the war, and revolutions in public sentiment, have sustained the warnings given in the early days of open treason, and my position taken at the firs

declaration of secession and war: "*that secession was disunion;* that to concede to one State the right to release her people from the duties and obligations belonging to their citizenship, and you would, by that act, annihilate the sovereignty of the Union, by prostrating its ability to secure allegiance;" also, that the violation of law, and a defiance of the authority and power of the General Government, however small, demanded the immediate punishment of the offenders, and the complete vindication of national integrity; and that the President should immediately employ the *whole material of the government, moral, political and physical,* if need be, to preserve, protect and defend the constitution of the United States.

After the war had progressed a year, and the mild measures which were still persistently advocated by many friends of the administration, and with all the evidence, on the part of the rebels, for complete preparation and determination to wage a long and desperate war against the government, I sent the President the following dispatch:

EXECUTIVE DEPARTMENT, SPRINGFIELD, ILLINOIS, *July 11th,* 1862.

President Lincoln, Washington, D. C.:

The crisis of the war and our national existence is upon us. The time has come for the adoption of more decisive measures. Greater vigor and earnestness must be infused into our military movements. Blows must be struck at the vital parts of the rebellion. The government should employ every available means compatible with the rules of warfare to subject the traitors. Summon to the standard of the Republic all men willing to fight for the Union. Let loyalty, and that alone, be the dividing line between the nation and its foes. Generals should not be permitted to fritter away the sinews of our brave men in guarding the property of traitors, and in driving back into their hands loyal blacks, who offer us their labor, and seek shelter beneath the federal flag. Shall we sit supinely by, and see the war sweep off the youth and strength of the land, and refuse aid from that class of men, who are at least worthy foes of traitors and the murderers of our government and of our children?

Our armies should be directed to forage on the enemy, and to cease paying traitors and their abettors exorbitant exactions for food needed by the sick or hungry soldier. Mild and conciliatory means have been tried in vain to recall the rebels to their allegiance. The conservative policy has utterly failed to reduce traitors to obedience, and to restore the supremacy of the laws. They have, by means of sweeping conscriptions, gathered in countless hordes, and threaten to beat back and overwhelm the armies of the Union. With blood and treason in their hearts, they flaunt the black flag of rebellion in the face of the government, and threaten to butcher our brave and loyal armies with foreign bayonets. They arm negroes and merciless savages in their behalf.

Mr. Lincoln, the crisis demands greater and sterner measures. Proclaim anew the good old motto of the Republic, "Liberty and Union, now and forever, one and inseparable," and accept the services of *all loyal men,* and it will be in your power to stamp armies out of the earth—irresistible armies, that will bear our banners to certain victory.

In any event, Illinois, already alive with at of drum, and resounding with the tramp

of new recruits, will respond to your call. Adopt this policy, and she will leap like a flaming giant into the fight.

This policy for the conduct of the war will render foreign intervention impossible, and the arms of the Republic invincible. It will bring the conflict to a speedy close, and secure peace on a permanent basis.

RICHARD YATES,
Governor of Illinois.

Impressed with these views, and the necessity of each State giving immediate and the most practical support to the government, and inspired by the unparalleled enthusiasm of the people of Illinois, I asked that millions should be armed where the government asked, in limited calls, only for a few hundred thousand men. Bull Run, Carthage, Wilson's Creek, and the attitude of Kentucky and Missouri, painfully demonstrated the inadequacy of preparation on the part of the government for the crisis; and had it not been for the overpowering uprising of the people of the free States, and their loyal and determined expression to take the war in their own hands, we might have had enacted on our own soil the scenes which have desolated border States, and the country involved in a strife for a period and in bitterness far exceeding the darkest periods we have passed in the last three years.

Before the battle of Bull Run, and before important points being occupied by rebel troops—after consultation with the Governors of the loyal States, and with distinguished citizens of Illinois, who, as commanding generals, have led our gallant soldiers to brilliant victories—I recommended the occupation of New Orleans, Memphis, Columbus, and commanding positions on the Cumberland and Tennessee rivers, by United States regular troops; thus obviating the necessity of arraying sections against each other by the employment of a volunteer army, and plainly foreshadowing the determination of the government to firmly resist and punish violations of law, and overwhelm the presumptuous insolence of rebel leaders in the act of inaugurating rebellion in the States. These afforts were unavailing; and the government was afterward compelled to occupy these important positions by larger armies of volunteer troops, and at fearful sacrifice of life, and expenditure of millions of dollars. The conciliatory policy, so destructive to our interests in the west, entered largely into the organization of the army formed for the defense of the national capital, and offensive operations in Virginia; and we had the lamentable picture of the General chosen to chief command issuing orders that slaves discovered

in making war for the government against their rebellious masters should be put down with an iron hand, and one temporizing Governor of Missouri pronouncing the act of the President, in calling for a detachment of militia to enforce the national authority, "illegal, unconstitutional, revolutionary, inhuman, diabolical, and cannot be complied with." Another replied that "Kentucky will furnish no troops for the wicked purpose of subduing her sister southern States;" and "Tennessee will not furnish a single man for coercion."

Kid glove in civil council, and kid glove and warm sympathy "for our erring southern brethren" in the organization of the eastern army, made service there distasteful to western volunteers; and this sentiment impressed me with the importance of securing the close consolidation of our State forces at the commencement of the war; and, as far as it was consistent or possible for me to do so, I secured the intimate association of all our regiments in brigade and division organizations in the field. This also facilitated the convenient distribution of supplies then issued by the State for the General Government; provided the earliest relief possible to the largest number, after long marches and severe engagements; afforded the easiest and cheapest transit of sanitary supplies to field and general hospitals; and concentrated our contingents to the national army in corps designed for campaigns through territory familiar to both officers and men, and in which they would more speedily develop their genius for military life, and render the most efficient and practical service to the government. It was natural to presume that our young men who passed their early days in States south of the Ohio, and deplored the dedication of their old homesteads and associations to the cause of rebellion; and that the immigrant from New England, the Middle States, and Europe, dwelling upon our fertile prairies, and growing rich and independent from the products of free labor, would recognize the importance and more zealously prosecute the re-conquest of the valley of the Mississippi, and the control of its great river—our natural outlet to the ocean, so vital to the success of our enemies, and so necessary to the protection of our local interests, and the integrity of the Union—and that our whole people would sympathize with and sustain efforts to thus gather and unite the whole strength of the State in solid force against treason, and for the restoration of the national unity, perfect in all its parts.

Belmont, Donelson, Island No. 10, Shiloh, Corinth, Parker s Cross Roads, Port Gibson, Raymond, Champion Hills, Black River, Siege of Vicksburg, Perryville, Stone River, Chickamauga, Lookout Mountain, Atlanta, Franklin, Nashville, and the triumphal march of Sherman, speak in thunder tones of the consolidated efforts of Illinois, vieing with the volunteers of other States in battling for the Union.

We have lost thousands of our best men, and whole regiments and batteries, in the conflicts of this fearful war; but we have not to deplore the decimation of the ranks of gallant regiments, led by timid and halting generals on fruitless and purposeless campaigns, prosecuted without skill or vigor, and with the deplorable *morale* of a fear to punish traitors not actually in arms, and the employment of the best strength of their armies in protecting rebel property.

The following exhibits the quotas of the State under respective calls since commencement of the war, and the number of men furnished to the national armies to the present time:

Our quota, under calls of the President

In 1861, was	47,785
In 1862, "	32,685
In 1863, "	64,630
In 1864, "	52,260
Total quotas under all calls prior to Dec. 1, 1864.....	197,360

During the years 1861, 1862, and to the 18th day of October, 1863, the State, by voluntary enlistment, had exceeded its quota under all calls. Prior to that date settlements had not been made with the War Department, because of the voluntary action of our people in meeting the requirements of the country and their persistence in organizing, with unparalleled enthusiasm and determination, a larger number of regiments and batteries than the actual quotas under each levy called for. Prior to 17th October, 1863, the State had furnished and been credited with one hundred and twenty-five thousand three hundred and twenty-one (125,321) men —a surplus of eight thousand one hundred and fifty-one (8,151) over all other calls, to be credited to our quota for that call, and which reduced it to 19,779 men; and we claimed, besides, other credits, which could not be fully adjusted because of imperfect record of citizens (and in some cases whole companies of Illinoisans)

who had entered the service in regiments of other States, at times when our quotas on special calls were full, and because of which I was compelled to decline their services. Six thousand and thirty-two (6,032) citizens of Illinois prior to that date had been enlisted in Missouri regiments, and residents of Missouri had enlisted and been mustered in Illinois regiments, which left a credit, as between the States, in favor of Illinois of 4,373 men.

After adjustment of credit of 125,321, at and prior to October, 1863, it was ascertained we were entitled to an additional credit of 10,947, which increased the number enrolled *in our own regiments*, and for which we were entitled to credit prior to that call, to 136,-268—leaving the whole account, at that date, thus:

Quotas under all calls to October, 1863.....		145,100
Credits for enlistments in Illinois regiments.....	136,268	
Balance in Missouri regiments.....	4,373	
		140,641
Balance due the government.....		4,459

At this time there was a claim made by the State for volunteers previously furnished, which would more than account for the balance against us of 4,459. This adjustment was made in February, 1864, and was *exclusive of old regiments re-enlisting as veterans*, and disclosed the fact that at the time the first draft was ordered, viz: January 1st, 1864, under the call of October, 1863, Illinois had exceeded her quota, and, by the voluntarily demonstrated patriotism of her people, was free from draft.

The unadjusted balances of the State claimed as above were allowed in the settlement made with the War Department, in August last.

Between the first day of October, 1863, and the first day of December, 1864, we have furnished and received additional credits for fifty-five thousand six hundred and nineteen (55,619) men which, added to credit of 140,641 to October 1, 1863, makes 197,-260 men, which leaves our whole account thus:

Quotas of the State under all calls prior to Dec. 1, 1864...		197,360
Total credits for three years volunteers, drafted men and substitutes to Dec. 1, 1864.....		197,260
Balance due the government Dec. 1, 1864.....		100

The deficit of *one hundred men* has been more than balanced by enlistments during the month of December, 1864.

Of the entire quota of one hundred and ninety-seven thousand three hundred and sixty (197,360) men, we have furnished *one hundred and ninety-four thousand one hundred and ninety-eight* (194,198) *volunteers* and *three thousand and sixty-two* (3,062) *drafted men*—organized as follows:

138 regiments and one battalion of infantry.
17 regiments of cavalry.
2 regiments and 8 batteries of artillery.

ONE HUNDRED DAY TROOPS.

In addition to the foregoing the State has furnished thirteen (13) regiments and two companies of one hundred day volunteers, the following being the numerical designation, name of commanding officer and strength of each:

No. of regiment.	Commanding Officer.	Aggregate
132	Col. Thomas J. Pickett	853
133	" Thaddeus Phillips	851
134	" Walter W. McChesney	878
135	" John S. Wolfe	855
136	" Frederick A. Johns	842
137	" John Wood	849
138	" John W. Goodwin	835
139	" Peter Davidson	878
140	" Lorenzo H. Whitney	871
141	" Stephen Bronson	842
142	" Rollin V. Ankney	851
143	" Dudley C. Smith	865
145	" George W. Lackey	877
.....	Capt. Simon J. Stookey, (Alton battalion—two companies)	181
	Total	11,328

After the fall of Vicksburg, in 1863, and General Sherman's raid into Mississippi, Georgia and Alabama, active military operations were transferred from the Mississippi to Eastern Tennessee and Georgia. The forces of the enemy, during the winter of 1863-4, were being largely increased and carefully prepared for a desperate spring and summer campaign, east and west, and in April he had concentrated his strength for offensive operations in Virginia and Georgia, or, in the event of our advance, for the most determined

and bitter resistance. To hold the vast extent of country wrested from the enemy, embracing many States and territories, many thousand miles of sea coast, the whole length of the Mississippi, and most of her tributaries, and protect our long lines of sea and river coast and rail communication, required an immense stationary force. The towns and cities surrounding strongholds, posts and garrisons, situated in the midst of a doubtful and in most part disloyal population, required too great a portion of our large army for their protection and defense. In view of these circumstances, and of the palpable evidence which surrounded us that the battles about to be fought in Virginia by the army under direct supervision of Lieutenant-General Grant, and in Georgia under General Sherman, would doubtless decide the fate of the country, the Governors of the Northwestern States believed that the efficiency of the army and the prospects of crowning victories to the national arms would be greatly increased by a volunteer force, immediately raised, and which should occupy the points already taken and relieve our veteran troops, and send them forward to join the main army soon to engage the effective forces of the enemy. I therefore, in connection with Governors Brough of Ohio, Morton of Indiana, and Stone of Iowa, offered the President infantry troops for one hundred days' service, to be organized under regulations of the War Department, and to be clothed, equipped, armed, subsisted, transported and paid as other United States infantry volunteers, and to serve in fortifications wherever their services might be required, within or without the State. There being no law authorizing it, no bounty could be paid or the service credited on any draft. Our quota offered was 20,000 men, which was a fair proportion to the aggregate number (85,000) to be made up by all of said States.

Our regiments, under this call, performed indispensable and invaluable services in Kentucky, Tennessee and Missouri, relieving garrisons of veteran troops, who were sent to the front, took part in the Atlanta campaign, several of them, also composing a part of that glorious army that has penetrated the very vitals of the rebellion, and plucked some of the brightest laurels that this heroic age has woven for the patriot soldier. Five of our one hundred days regiments, after their turn of service had expired, voluntarily extended their engagement with the government, and marched to the relief of the gallant and able Rosecrans, who, at the head of

an inadequate and poorly appointed army, was contending against fearful odds for the preservation of St. Louis and the safety of Missouri. The officers and soldiers of these regiments evinced the highest soldierly qualities, and fully sustained the proud record our veterans have ever maintained in the field—and the State and country owe them lasting gratitude, and we have, in a great degree, to attribute our successes in Virginia and Georgia to the timely organization and efficient services of the one hundred day volunteers, furnished by all of said States. The President has, by order, returned them the thanks of the government and the nation for the service thus rendered, and accords the full measure of praise to them, as our supporters and defenders in the rear, to which the regular reserve force of large armies are always entitled.

RECRUITING SERVICE.

The General Government has aimed to divide the burden of supplying troops for the national army equally between the loyal States, and, according to the best information attainable, I believe the States have responded fully. To husband the resources of the State, in its number of arms-bearing men, I have thrown every guard possible around the recruiting system. In 1861, by proclamation, issued in July, I forbade the recruitment of volunteers in Illinois for the regiments of other States, and discouraged our citizens from leaving the State to join the organizations of others—but in that year was partially unsuccessful, because of the small number of regiments accepted in proportion to the very large number of our citizens who tendered their services. Diligent efforts were made to trace out organizations and individuals who left the State under these circumstances, and the records in the Adjutant General's office exhibit our success in reclaiming several whole regiments, and nearly 10,000 men, distributed through various regiments of Missouri and other sister States.

In 1861 and 1862 a few arrests were made for violation of the order, and parties guilty, upon surrendering the recruits, were dismissed, upon obligation to observe the prohibition in future. In 1863 there was no marked violation of the regulation; but, in 1864, when the emergencies and casualties of the service demanded the reinforcement and large increase of the army, many of the States became almost exhausted in number of citizens who could volunta-

rily offer their services to the country; and, to protect their agricultural, manufacturing and other industrial interests, their legislatures had provided, by law, for the payment of large bounties, from their State treasuries, and authorized towns and counties also to pay bounties, and to levy a tax to provide for the same—thus affording additional inducements (to residents of other States, not making such provisions,) to the general bounty and premium provided by laws of Congress.

The enrollment act of last Congress also provided for enlistment of volunteer recruits in insurrectionary districts, and provided for the appointment, by Governors of the respective States, of agents to recruit there, at State expense, and that volunteers, thus enlisted, should be credited to the quota of the town, township, ward of a city, precinct, or election district of a county procuring them.

As there was no State law for, or appropriation made, from which to pay the expenses of this system, I was unable to employ agents to recruit for the State; but in my proclamation of August 9th, 1864, announcing the quotas and credits to July 18th, 1864, and calling upon the people to fill our quota by volunteering, this system was fully presented, and towns, cities and districts invited, at their own expense, to avail themselves of the privileges of the law and orders of the war department, made in pursuance thereof, to meet delinquencies of past calls, or to fill up their quotas under call of July 18th, 1864, then pending. A very small number had agents appointed, but, I believe, without practical results—the inducements they were enabled to offer being inferior to those presented by agents of other States.

To provide against the enlistment of citizens of this State, or persons, white and colored, who had taken refuge here from States or districts in rebellion, in the regiments, or to be used as the contribution of wealthy counties or localities of other States, which would result in increasing the burdens of war (either in *men* or *dollars*) upon our citizens, I deemed it proper to issue the following proclamation:

EXECUTIVE OFFICE,
SPRINGFIELD, ILLINOIS, *August* 6, 1864.

It is hereby ordered that no recruiting for companies or regiments of other States shall be permitted in this State.

All recruiting officers or agents for other States, and the agent or attorneys of com-

panies organized to procure substitutes for persons drafted in other States, are hereby peremptorily forbidden to recruit or enlist volunteers or substitutes within this State during the war.

This order shall apply to all residents or citizens of Illinois, as well as the citizens of other States, recruiting within this State for regiments of other States.

All recruiting agents for Illinois regiments, Provost Marshals, and loyal citizens are requested to give notice of any violation of this order, that offenders may be arrested and punished, and the objects designed by this limitation to recruiting entirely accomplished.

Illinois has heretofore promptly responded to all calls for volunteers, and it behooves every good citizen to contribute every reasonable influence to sustain our veteran regiments, which have so honored the State in efforts to sustain the Union, and I earnestly entreat all citizens who desire to enter the military service of the country to join Illinois regiments only. As our brave boys have struggled to give our State its proud position, let us eschew all selfish inducements (presented by other States) and generously sustain them and our veteran organizations in the field.

RICHARD YATES, *Governor.*

Besides enforcing the view that the State should not be called upon or allowed to furnish more than her quota, I was impelled to insist upon her husbanding our resources for the future demands of the country; also by a desire to have our entire quota assigned to our old regiments, that they might, without consolidation, retain their names and organizations—rendered illustrious by gallant deeds on scores of battle fields—and in justice to tried officers, who could not be promoted until their companies and regiments were full; and because of the immediate effectiveness of new recruits, in veteran organizations, under experienced officers. I am glad to state that the Secretary of War issued orders to the United States officers, on duty in this State, to enforce the provisions of the order.

In prompt support of the government at home, and in response to calls for troops, the State stands pre-eminently in the lead among her loyal sisters; and every click of the telegraph heralds the perseverance of Illinois Generals and the indomitable courage and bravery of Illinois sons, in every engagement of the war. Our State has furnished a very large contingent to the fighting strength of our National army. In the west, the history of the war is brilliant with recitations of the skill and prowess of our general, field, staff and line officers, and hundreds of Illinois boys in the ranks are specially singled out and commended by Generals Grant, Sherman, and other Generals of this and other States, for their noble deeds and manly daring on hotly contested fields.

One gallant Illinois boy is mentioned as being the first to plant the stars and stripes at Donelson; another, at a critical moment, anticipates the commands of a superior officer, in hurrying forward an ammunition train, and supervising hand grenades, by cutting short the fuses of heavy shell, and hurling them, with his own hands, in front of an assaulting column, into a strong redoubt at Vicksburg; and the files of my office and those of the Adjutant General are full of letters mentioning for promotion hundreds of private soldiers, who have, on every field of the war, distinguished themselves by personal gallantry, at trying and critical periods. The list of promotions from the field and staff of our regiments to Lieutenant and Major Generals, for gallant conduct and the prerequisites for efficient and successful command, compare brilliantly with the names supplied by all other States, and is positive proof of the wisdom of the Government in conferring honors and responsibilities; and the patient, vigilant and tenacious record made by our veteran regiments, in the camp, on the march and in the field, is made a subject of praise by the whole country, and will be the theme for poets and historians of all lands, for all time.

Prominent among the many distinguished names who have borne their early commissions from Illinois, I refer, with special pride, to the character and priceless services to the country of Ulysses S. Grant. In April, 1861, he tendered his personal services to me, saying "that he had been the recipient of a military education at West Point, and that now, when the country was involved in a war for its preservation and safety, he thought it his duty to offer his services in defense of the Union, and that he would esteem it a privilege to be assigned to any position where he could be useful." The plain, straight forward demeanor of the man, and the modesty and earnestness which characterized his offer of assistance, at once awakened a lively interest in him, and impressed me with a desire to secure his counsel for the benefit of volunteer organizations, then forming for government service. At first, I assigned him a desk in the Executive office; and his familiarity with military organization and regulations made him an invaluable assistant in my own and the office of the Adjutant General. Soon his admirable qualities as a military commander became apparent, and I assigned him to command of the camps of organization at "Camp Yates," Springfield, "Camp Grant," Mattoon, and "Camp Douglas," at Anna, Union county, at which the 7th, 8th, 9th, 10th,

11th, 12th, 18th, 19th and 21st regiments of Illinois volunteers, raised under the call of the President, of the 15th of April, and under the "Ten Regiment Bill," of the extraordinary session of the Legislature, convened April 23d, 1861, were rendezvoused. His employment had special reference to the organization and muster of these forces—the first six into United States, and the last three into the State service. This was accomplished about the tenth day of May, 1861, at which time he left the State for a brief period, on a visit to his father, at Covington, Kentucky.

The 21st regiment of Illinois volunteers, raised in Macon, Cumberland, Piatt, Douglas, Moultrie, Edgar, Clay, Clark, Crawford and Jasper counties, for thirty-day State service, organized at the camp at Mattoon, preparatory to three years' service for the government, had become very much demoralized, under the thirty days' experiment, and doubts arose in relation to their acceptance for a longer period. I was much perplexed to find an efficient and experienced officer to take command of the regiment and take it into the three years' service. I ordered the regiment to Camp Yates, and after consulting Hon. Jesse K. Dubois, who had many friends in the regiment, and Col. John S. Loomis, Assistant Adjutant General, who was at the time in charge of the Adjutant General's office, and on terms of personal intimacy with Grant, I decided to offer the command to him, and accordingly telegraphed Captain Grant, at Covington, Kentucky, tendering him the Colonelcy. He immediately reported, accepting the commission, taking rank as Colonel of that regiment from the 15th day of June, 1861. Thirty days previous to that time the regiment numbered over one thousand men, but in consequence of laxity in discipline of the first commanding officer, and other discouraging obstacles connected with the acceptance of troops at that time, but six hundred and three men were found willing to enter the three years' service. In less than ten days Col. Grant filled the regiment to the maximum standard, and brought it to a state of discipline seldom attained in the volunteer service, in so short a time. His was the only regiment that left the camp of organization on foot. He marched from Springfield to the Illinois river, but, in an emergency requiring troops to operate against Missouri rebels, the regiment was transported by rail to Quincy, and Col. Grant was assigned to command for the protection of the Quincy and Palmyra, and Han-

nibal and St. Joseph railroads. He soon distinguished himself as a regimental commander, in the field, and his claims for increased rank were recognized by his friends in Springfield, and his promotion insisted upon, before his merits and services were fairly understood at Washington. His promotion was made upon the ground of his military education, fifteen years' services as a Lieutenant and Captain in the regular army, (during which time he was distinguished in the Mexican war,) his great success in organizing and disciplining his regiment, and for his energetic and vigorous prosecution of the campaign in North Missouri, and the earnestness with which he entered into the great work of waging war against the traitorous enemies of his country. His first great battle was at Belmont, an engagement which became necessary to protect our Southwestern army in Missouri from overwhelming forces being rapidly consolidated against it from Arkansas, Tennessee and Columbus, Kentucky. The struggle was a desperate one, but the tenacity and soldierly qualities of Grant and his invincible little army, gave us the first practical victory in the west. The balance of his shining record is indelibly written in the history of Henry, Donelson, Shiloh, Corinth, Vicksburg, Chattanooga, The Wilderness, siege of Richmond, and the intricate and difficult command as Lieuteuant General of the armies of the Union—written in the blood and sacrifices of the heroic braves who have fallen, following him to glorious victory—written upon the hearts and memories of the loyal millions who are at the hearth-stones of our gallant and unconquerable "Boys in Blue." The impress of his genius stamps our armies, from one end of the Republic to the other; and the secret of his success in executing his plans, is in the love, enthusiasm and confidence he inspires in the soldier in the ranks, the harmony and respect of his subordinate officers, his own respect for and deference to the wishes and commands of the President, and his sympathy with the government in its war policy.

As evidence of the materials of the State of Illinois for war purposes, at the beginning of the war, and a pleasing incident of Grant's career, I refer to an article in a Vicksburg paper, the "Weekly Sun," of May 13th, 1861, which ridicules our enfeebled and unprepared condition, and says: "An official report made to Governor Yates, of Illinois, by one Captain Grant, says that after examining all the State armories he finds the muskets amount to just nine hundred and four, and of them only sixty in serviceable

condition." Now the name of that man, who was looking up the rusty muskets in Illinois, is glory-crowned with shining victories, and will fill thousands of history's brightest pages to the end of time. I know well the secret of his power, for afterwards, when I saw him at head quarters, upon the march, and on the battle field, in his plain, thread-bare uniform, modest in his deportment, careful of the wants of the humblest soldier, personally inspecting all the dispositions and divisions of his army, calm and courageous amidst the most destructive fire of the enemy, it was evident that he had the confidence of every man, from the highest officer down to the humblest drummer boy in his whole command. His Generalship rivals that of Alexander and Napoleon, and his armies eclipse those of Greece and Rome, in their proudest days of imperial grandeur. He is a gift of the Almighty Father to THE NATION, in its extremity, and he has won his way to the exalted position he occupies through his own great perseverance, skill and indomitable bravery, and it is inexcusably vain for any man to claim that he has made Grant, or that he has given Grant to the country, or that he can control his great genius and deeds for the private ends of selfish and corrupt political ambition.

WAR EXPENDITURES.

The inability of the government to clothe, arm, subsist, transport and pay the first quota of troops, devolved upon the State extensive expenditures.

The Legislature, specially convened in April, 1861, provided for supplying troops raised under the first calls, and passed laws authorising the issuing of bonds to defray war expenses, and the appointment of a Board of Army Officers, to audit accounts. This board were governed by the provisions of the State law in adjusting war claims, and, upon their recommendation, approved by the Governor, the Auditor issued warrants on the Treasurer to claimants. The difficulty of getting accounts of the State adjusted, and reimbursements from the United States, created the necessity of frequent journeys to Washington, by myself and agents, as it was found impossible, in the immense pressure upon the departments, to accomplish much without persistent personal application. It was at length found necessary to adopt the plan of other States, and appoint a State agent there. Hon. Thos. H. Campbell, formerly State

Auditor, was appointed, and gave constant attention to the settlement of the State accounts, up to the time of his death. Afterwards, Hon. James C. Conkling was employed to go to Washington and press the settlement of our accounts, and succeeded in procuring payment of sufficient sums to relieve the Treasurer from the pressure of claimants holding warrants on the war fund. But owing to the immense pressure of business upon the Treasury Department, and difficulties experienced in making satisfactory explanations of accounts suspended and disallowed, he found it impossible, at the time of his last visit, to secure a final adjustment of our claims.

In March, 1864, I sent Col. John S. Loomis, who had been connected with the State Department from the commencement of the war—first as Assistant Adjutant General, and recently, as my principal Aid-de-Camp—to Washington, with instructions to urge final adjustment of all our accounts. His extensive acquaintance with the origin and history of our military organization and contracting and settlement of war claims, enabled him to make full explanation of our vouchers, and prosecute appeals from what was considered erroneous decisions of adjusting officers of the Treasury, in disallowing and suspending a part of our claims. He was accompanied by Gen. John Wood, Quartermaster General of the State, whose services were required to aid settlement of the class of claims originating in his department. From the report of Col. Loomis, and copies of his appeals on suspended and disallowed accounts, herewith transmitted, it will be seen that the claims of the State against the government, filed in the Treasury Department, for war expenses, amounted to three millions eight hundred and twelve thousand five hundred and twenty-five dollars and fifty-four cents ($3,812,525 54); of which amount there has been allowed, on various settlements with the Third Auditor, three millions seven hundred and twenty-six thousand seven hundred and ninety-two dollars and eighty-seven cents ($3,726,792 87); leaving a difference between the claims and allowances, in that department, of eighty-five thousand seven hundred and thirty-two dollars and sixty-seven cents ($85,732 67) suspended and disallowed, because, in the opinion of the said Auditor the law did not sufficiently provide for them. Of the amount allowed by the Third Auditor, and passed to the Second Comptroller of the Treasury, it will also be seen, that the Comptroller suspended nearly all of our State claims upon

ground of insufficiency of vouchers, but which decision, upon the appeal of Col. Loomis, the Secretary of the Treasury reversed, and ordered a settlement of the accounts. An appeal was also taken upon the suspension and disallowment of accounts in the Third Auditor's office ($85,732 67), which is set forth in the report.

I am recently advised, by letter from the Treasury Department, that upon last settlement there was found to be due the State four hundred and sixty-eight thousand two hundred and sixty-five dollars and ninety-eight cents, ($46 ,265 98,) and that the amount of suspensions and disallowances has been reduced to twenty-seven thousand three hundred and ninety dollars and seventy-four cents, ($ 27,390 74.)

Thirty thousand dollars have recently been paid by the government on the balance found due on our accounts; which sum is sufficient to pay off all warrants drawn upon the State Treasury against the war fund.

There being no provision made by the Legislature for paying contingent expenses of the State government or for expenses of prosecuting claims against the government, the expenses incurred since the death of Mr. Campbell have been advanced by these agents, who should be reimbursed by the State.

In this connection, I desire to call your attention specially to the report of Colonel Loomis. It gives a complete history of a necessity for all the expenses incurred by the State for the General Government, and, in my opinion, clearly establishes the right of the State to reimbursement of every dollar we have advanced, and which yet remain suspended. Colonel Loomis' labors in the adjustment of our war accounts have been invaluable, and it is recommended that a sufficient appropriation be made for his services and expenses.

REPORT OF THE ADJUTANT GENERAL.

I regret that on account of the severe illness of Adjutant General A. C. Fuller, in November and December last, he has been unable to submit his regular biennial report. I transmit herewith a communication from him, exhibiting the expenses of his department during the past two years, the inadequate appropriations made by the Legislature to meet such expenses, and the amount

required to pay the balance due various persons therein mentioned, and I recommend that an appropriation be made at an early day to pay it.

I have also lately inspected the Adjutant General's office, and deem it proper to say, that it is as complete in all its arrangements and in the perfection of its system and method as any similar office in the United States. General Fuller has been a most able, faithful and energetic officer, and is entitled to the gratitude of the State.

THE STATE SANITARY COMMISSION.

During the first year of the war our soldiers in the field received their supplies of sanitary stores principally through "Soldiers' Aid Societies," which were established in different parts of the State, and operated by the loyal women of Illinois, and the very pratical and patriotic munificence of citizens of Chicago, who established the "Sanitary Commission of Chicago." The operations of all these societies were conducted on the most liberal scale, and were in the highest degree useful. Almost every village and neighborhood in the State were engaged in the noble work. Humane and large hearted men contributed bountiful supplies of money and material, and loyal and patriotic women plied the needle and prepared articles of food and stores of every description, indispensable to the soldier; and the agents of these noble men and women covered the field with ambulances and filled the hospitals with appliances for the sick and wounded. These Soldiers' Aid Societies were the nucleus for all the great sanitary fairs which have so bountifully replenished the treasuries of the United States and Christian Commissions.

The government, in the early part of the war, depended upon the States for supplies for the regiments of each State entering the United States service, and from the embarrassed position attendant upon the organization of so large an army, it was impossible to provide so many at the right time and place with sanitary supplies. Appeals came to me, as Governor of the State, from agents already in the field, and from surgeons and commanding officers, urging the forwarding of sanitary stores, and I deemed it my duty to render the aid of the State to the extent of my power, by sending relief to the brave men who had with such enthusiasm and patriotic de-

votion to country, to peril health, life and property for the preservation of the Union.

On the 20th of August, 1862, I established a State Sanitary Bureau, and assigned charge of the department to Colonel John Williams, Commissary General of the State, to whom all communications and supplies were to be sent and distributed. I then addressed a circular to the people of the State of Illinois, soliciting contributions of money and supplies, and requesting them to forward them to this commission. As proof of the liberal response of the people, both in money and supplies, I take pleasure in referring you to the comprehensive report of Colonel Williams, set forth in "Report of Transactions of the Illinois State Sanitary Bureau," and transmitted herewith, and I take special pleasure in referring to the patient labors of Colonel Williams, who, during these long years of war, has afforded me invaluable advice and assistance in discharging our mutual obligations to the people and the army. Upon his advice and the enlarged and extensive field of usefulness prepared for us by the liberality of the people, in subscriptions, I changed the organization of the Sanitary Bureau on the 12th day of September, 1863, by establishing the "Illinois State Sanitary Commission," with Colonel John Williams, Hon. William Butler, John P. Reynolds, Esq., Robert Irwin, Esq., and Eliphalet B. Hawley, Esq., constituted as a Board of Directors, to supervise and control the operations of the Commission, and referred to this board the annual report of the "Sanitary Bureau," embracing a complete statement of receipts and disbursements of stores and moneys contributed by citizens of the State for sanitary purposes. The "Sanitary Bureau," to this time, had received, in addition to a large amount of sanitary stores, twenty-eight thousand dollars, ($28,000,) and expended twenty thousand dollars, ($20,000,) leaving a balance of eight thousand dollars ($8,000) to be transferred to the treasury of the "Illinois State Sanitary Commission." A statement of the receipts and disbursements of this commission, from its organization to the 31st day of December, 1863, will be found in the joint report of the "State Sanitary Bureau" and "Illinois State Sanitary Commission," before referred to, and transactions since that time will soon be communicated to your honorable body.

The time and services of all the directors of the "State Commis-

sion" have been given gratuitously, and they have been most faithful and worthy custodians of the people's bounty to our brave boys in the field.

I may be pardoned for doing merited justice to the aid societies of Quincy, Jacksonville, Springfield, Alton, Bloomington, Decatur, Peoria, Galesburg, and other cities and towns throughout the State, and especially to our metropolitan city of Chicago, which through her Board of Trade, her various sanitary associations, Soldiers' Aid Societies, and individual efforts of many of her citizens have rendered most munificent aid, and, in this respect, has fully come up to that high standard, which in so many other matters of patriotic and public spirited enterprise, has given her justly a proud rank among the first cities of the Union.

REPORTS OF SANITARY AGENTS.

I refer the General Assembly to the very interesting reports of our sanitary agents, and more especially to the reports of Colonel T. P. Robb, who has been agent for the State from the commencement of the war, and whose labors have been most severe, arduous and efficient. I recommend that a large number of his reports be printed and circulated for information of the people. The reports of Dr. O. M. Long, State Agent at New Orleans, Edward I. Eno, at Nashville, and Mr. Dunseth, at Louisville, and some others which I submit, contain valuable information. I also recommend that the Legislature make proper appropriations for their services and expenditures.

STATE ARSENAL.

During the four years past, vast quantities of ammunition have been fabricated at the arsenal, for field guns and small arms for the General Government. Arms have been repaired, cleaned and stored, and nearly all the arms used by the various arms of the service in the field from this State, have been received, stored and issued through the Engineer-in-Chief of the State. The State arsenal, for the most part, has been used as an ordnance depot for the General Government. Frequently the arsenal has had stored within it more than a million dollars worth of valuable property. Much and constant labor has been given, in arming and equipping the various regiments of the State. All the regiments for the three

months' service were armed and equipped from its stores; also, all the arms of the various veteran regiments have been received and stored, and, at the expiration of furloughs, re-issued by the officer in charge of the department. The arsenal, located in the midst of the city, in which is stored a large quantity of materials liable to explode at any moment, has given rise to much dissatisfaction on the part of the citizens living in the immediate vicinity. Quite recently, two fires occurred in the frame buildings adjacent, and it was saved from destruction only by prompt efforts and the removal of a stable adjoining. In view of the complaints, which seem to be well grounded, I would respectfully suggest that the General Assembly, in the exercise of sound discretion, take such steps for its removal, or the building of a larger and more suitable ordnance depot, beyond the limits of the city.

I would also recommend that a sufficient appropriation be made, to reimburse the party, the destruction of whose property was necessary to save the arsenal.

I cannot speak in too high terms of Col. W. D. Crowell, the officer in charge of the arsenal. He has shown the utmost faithfulness and ability in the discharge of his duties.

THE MILITIA.

I will not discuss the importance of a military organization of the State further than to refer you to my former messages on this subject, and to add my firm conviction that it is the duty of this General Assembly to pass a law providing for putting the State upon a complete military footing. There have been times, during my administration, when I felt the want of such a law. The raids into Pennsylvania by Lee, and into Indiana and Ohio, when those States had no military organization to meet them, show that our statesmen have not paid much attention to the safe maxim, "in peace prepare for war." The threatened raids upon the Ohio at Paducah and Shawneetown, were sufficient to create general alarm. If Forrest had been successful at Paducah, or Price had been successful in Missouri, they would have looked to the rich fields of Illinois for conquest and plunder. The first duty of every citizen is to the State, and, therefore, let the General Assembly enact such laws as will, in case of emergency, upon the shortest notice, secure the services of every able-bodied citizen to the State. At my re-

quest, one of our best and ablest officers, Colonel John M. Loomis, late of the 26th Illinois infantry, has commenced the preparation of a bill, which he will, if desired, submit to the committee on military affairs, for their consideration.

RECORD OF ILLINOIS SOLDIERS.

I would recommend to the Legislature that a work be prepared and published, giving the name, age, residence, occupation, nativity, date of enlistment and muster of every Illinois soldier engaged in government service during this war. Also, a historical memoranda, embracing the casualties to officers and men, and the marches, skirmishes and battles in which each company and regiment have participated, and the different brigade, division, army corps and departments to which they have been attached during their term of service. This record could be compiled from rolls and files of the Adjutant General's office, and reports from the field, which could, with proper attention, be procured. To secure an accurate history of men and organizations, the work should be immediately commenced, and finished before regiments now in service are disbanded on expiration of term of enlistment. The work would be of priceless value to our State for all time, and would remain the most glorious history of the part we have taken in the war for defense of the Union, that could possibly be written. I sincerely hope the Legislature will seriously consider and carry out this recommendation.

RECOMMENDATIONS FOR TAX FOR DESTITUTE FAMILIES OF SOLDIERS, SCHOOLS FOR SOLDIERS' ORPHANS, AND A STATE SANITARY BUREAU.

I solicit the earnest consideration of the General Assembly to several important propositions. First—that a tax be levied of not less than two mills to the dollar during the continuance of the war, for the relief of the destitute families of our deceased and disabled soldiers. In some states, large provision has been made by the Legislature for this object, while in ours none has been made. The cases of actual suffering which have come to my notice have been very numerous. Ohio levies a tax of two mills on the dollar for this purpose. Illinois is not a parsimonious people, and while no state has beat her in the valor of her troops, I trust none shall in the generosity of her people. Second—that a State Sanitary

Bureau be established, and ample appropriation be made for sending efficient agents to all the principal points where our troops are operating to distribute supplies, or to see that our troops receive their full share of the supplies from this State which are required to be distributed through the United States Sanitary Commission; also to visit our sick and wounded, and minister to their wants on the battle-field, to aid them in procuring furloughs, discharges, pay, etc. Indeed, I think that an agent might be usefully employed in accompanying each regiment of Illinois Volunteers, for the purpose of taking care of the sick, burying the dead, marking the spot of burial and corresponding with the friends and government at home, and making an annual report to the Adjutant General's office of the condition, wants, sufferings and achievements of the regiment. Under the supervision of this Bureau might be established a claim agency, through which all claims, pensions and bounties might be collected, free of cost to the claimant.

Second—each county court should be vested with authority to erect a monument to the officers and soldiers from that county who had died from wounds received in battle.

Third—that a stipulated sum be appropriated by a well digested enactmest of this General Assembly, with all the proper details, guards and restrictions, setting apart a fund to erect buildings and endow an institution as a home for the maintenance and education of the orphan children of our deceased or disabled soldiers, or that the said fund be properly distributed for their support, and their education in the district schools of the State.

At Chicago, Quincy, Mattoon, and other places in the State, patriotic and benevolent individuals have already made large subscriptions towards the erection of homes for the orphan children of our soldiers, which entitles them to the gratitude of the country, and while very much has been, and doubtless will be done by patriotic and benevolent men and women in this direction, I appeal to the General Assembly not to suffer the performance of this great duty to depend upon the uncertain contingency of private benevolence.

If this government, with its million blessings, is to be secured to us, and transmitted to future generations, it will be done by our soldiers. If the army saves the republic, should there not be something like adequate remuneration to the men who have sacrificed

so much for the country? and should not we who have remained at home, having a million bayonets between us and danger, enjoying all the blessings of peace, and many actually reaping benefits besides from the war, in all kinds of business revived, provide for the comfort of their families? These brave boys comprise the flower of the commonwealth—are as intelligent and worthy as we. Many of them have left wives and children dependent upon them for support, and, with the present scanty pay, they find it impossible to keep them from penury, and I know hundreds of instances of actual suffering. It would be a burning shame if the exercise of noble devotion of our citizens, who are willing to give up their homes, their wives and children, should be the cause of suffering to those dearer to them than life. Let the provision be ample enough for every child in Illinois who can say, "my father fell at Belmont, or at Donelson, or Shiloh, or Corinth, or Vicksburg, Stone River, Chattanooga, Mission Ridge, Mobile, the capture of Richmond, the siege and destruction of Charleston, or the last grand triumphant struggle between freedom and slavery." It is no charity that I ask you to bestow upon them—it is your *duty* to take notice of every household saddened by the loss of a father or son in this war, and no man can enjoy the blessings of an approving conscience in this life, or the hope of salvation hereafter, who dares to neglect them. If the country will not take care of and provide for them, we are unworthy the sacrifices of our patriot sires of the revolution, and the shining record of manly courage and lofty patriotism of the Union armies of this day. No State is worthy of its sovereignty, and no government the respect of its people, who will not protect and nurture the children of its soldiers. No marble shaft marks the spot where sleep in the valley of the Cumberland or Tennessee, or on the banks of the father of waters, the remains of the brave Illinois volunteer, but we will most honor the dead by taking care of the living; and I speak in the name of the loyal millions of Illinois when I say that in all the ranks of the destitute children of our fallen and disabled soldiers, not one shall be left to beg or grow up in ignorance for want of an education. Illinois! the first upon the roll of honor among all the States, shall she not be among the first to emblazon her proud historic record by setting apart a liberal and unfailing endowment for the support and education of the indigent orphans of the soldiers of the State?

SOLDIERS' NATIONAL CEMETERY AT GETTYSBURG.

In August, 1863, shortly after the battle of Gettysburg, Pennsylvania, it was proposed by the Governor of Pennsylvania, that a National Cemetery should be establised at Gettysburg, for the burial of all the Union soldiers killed in said battle. This proposition was made to the Governors of all those States whose soldiers had participated in the battle, to wit: the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Ohio, Indiana, Wisconsin, Michigan, Minnesota and Illinois; and in it was embodied a plan for the establishment of the cemetery, which provides for the purchase of the ground, transfer of the bodies, and the establishment and maintenance of the cemetery, and also for the erection of a suitable monument, and the expenses for the establishment and maintenance of the cemetery, etc., to be apportioned among the States having soldiers buried there, each State to be assessed according to its population, as indicated by its representation in Congress. Without express authority, I deemed it my duty to join the Executives of other States named, in the acceptance of the plan, and thus securing to the noble sons of Illinois who had lost their lives in that sanguinary struggle a suitable resting place. The grounds were accordingly purchased and laid out by the State of Pennsylvania, and in November, 1863, I appointed Messrs. Clark E. Carr, of Galesburg, and Wm. L. Church, of Chicago, commissioners, to represent the State of Illinois at the inauguration ceremonies, which took place on the 19th of November, 1863. I would call your attention to all the correspondence on this subject herewith submitted, and the interesting report of the commissioners, which will be submitted to you.

I doubt not that my action in thus accepting, in behalf of the people of the State, a proposition securing to their brave dead a resting place and a monument worthy of their gallant deeds, will be approved, and that an appropriation will be made by the General Assembly of the proportionate share of Illinois, to be paid to the treasurer of the National Cemetery Association, in such installments as may be called for by the officers of the association; and also that an appropriation be made to pay the expenses of the commissioners, as set forth in their report.

In my inaugural and messages I presented at length my views upon the causes and remedies for the political troubles in which our country is involved. I shall now only refer to the present military situation, and to the hopeful prospects from the emphatic endorsement of the measures of the administration at the late election. Of the former, it is sufficient to say that, without feeling the first symptoms of exhaustion in the free loyal states, our arms are everywhere victorious, upon the land and upon the sea. We have lost no important ground; we have reclaimed the larger part of the territory and national property which had been taken from us. Grant has driven the enemy, step by step, from its siege of Washington to the gates of Richmond; Sheridan has swept clean the valley of the Shenandoah, driving Early backward, no more to lay waste our borders; Farragut remains undisputed conqueror of the seas; Sherman dashes, with Napoleonic tramp, and roams unrestrained, from city to city, through the very heart of the confederacy, unfurls our flag defiantly in the face of Charleston—soon to wave in re-established glory upon the very hights from which traitor hands struck it. And the very latest, perhaps the cleanest and most glorious victory of the war, displaying the most indomitable valor and brilliant achievements of our troops, is that of General Thomas and his brave army. The bonds of the confederacy are worthless in their own and every foreign market, all hope of foreign intervention or northern revolution, has failed them, and to-day our nation stands under brighter skies than have smiled upon us since the inauguration of the President on the 4th day of March, 1861, and before us the cheering prospect of speedy and final victory.

The verdict of the American people, at the late election, solved finally and forever all the questions of doubt as to the policy which is hereafter to be pursued. The history of the world presents no such grand results achieved in the interests of human liberty as that presented on the 8th day of November last, when the people, in the face of heavy taxation and enormous debt, in the face of immense sacrifice of life and treasure, when, amidst the trials, stress and storms of civil war, and the most intense political excitement, they went in almost breathless quiet to the polls, and recorded

their solemn verdict upon all the controverted questions which before have divided and agitated the country.

The result of that election has defeated all the hopes and expectations of the rebel leaders. Vice President Stephens, by far the greatest of all the insurgent leaders, confidently looked to divided counsels in the north as almost the last and only hope of success. But the verdict of the American people has declared, in language which does not admit of misconstruction, an invincible determination to prosecute the war to the bitter end of their final subjugation and annihilation, if they wickedly persist in their purposes and efforts to overthrow the government.

Every patriot contemplates with gratitude to God the safe passage of the nation through the ordeal of the Presidential election. We were in the midst of a terrible war—a fierce party contest was raging in all the loyal states, with personal hatreds and private ambition, and every element calculated to fan into frenzy the popular passions—there were ominous threatenings of civil war in the free states—the enemies of our government, in Europe as well as in the disloyal states, expected and predicted fatal divisions, and loyal men everywhere held their breath, in anxious fear of anarchy and disruption. But universal quiet everywhere prevailed, and peace, like the breath of spring, settled upon all the territory of the loyal states; and be it recorded as one of the sublimest spectacles in history, that the defeated party cheerfully acquiesced in the will of the majority. It is a pleasure now to record that, whether the minority was right or wrong before the election, they are all right now, and all bow in reverence and submission to the decisions of the ballot box—and whether they do believe the measures of the administration were the best or not, they yield a cheerful acquiescence, and evince every determination to stand by the authorities, and prosecute the war with the utmost vigor, because such is the verdict of the people.

I am far from disposed to consider the triumph at the late election in the light of a mere party triumph. It was a national victory. The enemies of the government need not lay the flattering unction to their souls that, because there was not perfect unanimity, there was any great division upon the leading question of the war, whether the Union shall be preserved. It would be absurd, and maliciously false, as well as detracting from the strength of the

nation, to denominate as rebels all who have differed with the measures and policy of the government. It is but justice to say of our fellow citizens in Illinois, who constitute the minority, that however they differed from us as to the men and measures of the administration, yet by far the larger part of them had convictions as strong and deep as our own in favor of the preservation of our glorious Union, and that to-day the sentiment of the free loyal states approximates closely to a unit in favor of all the leading principles of our republican institutions. This important fact is evidence of our national strength, and a warning to traitors and tyrants that though our people do not vote alike, yet they feel, think and will act alike upon the main question of preserving unbroken our nationality.

It teaches to foreign nations that there is an intense and undivided sentiment in favor of the preservation of the Union at every hazard of human life and national treasure, and that while the United States desires and prays for peace with all the world, she is not so divided as to brook any interference from any foreign government, potentate or power, in the adjustment of the question whether she shall require and enforce obedience to her constitution and laws. And protesting that peace is our desire and not war, I speak in behalf of the two millions of Illinois, when I say that they stand ready to repel with the strong arm of military power, interference from any foreign country, or any of its dependencies; and that we will meet them on the land or on the sea, whenever they seek to try the issue. We mind our own business, let foreign nations mind theirs. We ask no favors, nothing but the neutrality which every nation interested to maintain its national authority must have, and that we will have or we will have war. Such language is not diplomatic, but it is the feeling of every true hearted American, who has reluctantly been forced to believe that through jealousy of our growing power and our free and liberal institutions, the two great nations of Europe have not only sympathized with but contributed material aid to the rebels in their attempt to overthrow our government. For such offences the United States has too long been paid with diplomatic apologies. The United States could well overlook the unauthorized acts of reckless British sailors and bravadoes; but British statesmen, men of rank and power, the large portion of the British nobility and the government press have from the beginning of the war exhibited to our cause bitter hostility

and rejoiced in the reverses to our arms. They have given friendly connivance to vessels which ran our blockades, and to pirates who preyed upon our commerce; have suffered piratical ships to be built in her ports, and to be manned with sailors from her navy, and our brave boys fighting for the Union have been shot by English cannon and English muskets placed in the hands of the rebels by British gold. Rebel ambassadors and conspirators have been feted and lionized at British courts, while our ministers have been treated with the cold formalities of diplomatic intercourse. In a neighboring British province traitors from the south and the north, and foreign emissaries, have holden their counsel of treason and conspiracy against our government, while southern traitors have sought the protection of English soil from which to send their raiders to burn our vessels on the lakes and rob and murder our citizens.

Now our only reliance for a continuation of peace with England is thorough and ample preparation for war. We cannot calculate upon her justice when her sympathies and prejudices are so marked against us. Our immunity from war with England is in our strength. Our policy and our safety is to let it be made apparent to England and all foreign nations that we ask no favors, and that we can make war more destructive to them than they can to us. While we appeal to their justice, we will let them understand that we expect it more from the strength of our naval marine and the calibre of our guns, than from any fair foreign appreciation of our cause. In this connexion I recommend the General Assembly to express in strong terms their approval of the action of the President, that after the expiration of the six months conditionally stipulated in the arrangement with Great Britian, the United States will proceed to increase her naval armament upon the lakes. The State of Illinois, as well as every State bordering upon the lakes, is deeply interested in this question. Our cities and harbors are exposed to raids and incursions without vessels of war to protect them. Indeed, the power to control the northern lakes is now in the hands of the British government, because by her canals she could in a few weeks place a fleet of gunboats upon them by which she could annihilate our commerce and place all of our lake cities, without a single exception, at the mercy of the invader. And here also is the war argument in favor of our own ship canal, by which we could transfer our fleets of gunboats, transports and munitions of

war from our seaboard to the lakes, if required by the emergency of war with a foreign nation.

But again, the verdict of the people at the late election is the death of the traitorous theory of secession. It reasserts the doctrine of our fathers, as maintained in the late Baltimore platform, that the Union is not a mere compact or league from which any State may recede at its mere caprice or pleasure; and we send down to our children our solemn verdict that the national government is the sovereign power of the land—that the constitution of the United States and the laws made in pursuance thereof shall be the supreme law of the land. There is no political heresy so dangerous to the existence of our government as the doctrine of the right of secession which southern politicians have sugar coated with the plausible sobriquet of State Sovereignty. The theory is full of danger—of inevitable national disintegration and final overthrow. Were I to presume to leave a lesson to my children most serviceable to my country, it would be to guard against the insidious doctrine of State sovereignty in the meaning which nearly all southern politicians and many northern politicians have given to it. To understand the immense danger, look at the action of Governor Seymour, who during the war has thrown the power of the Empire State of the Union against the constituted authorities of the government, and consequently against a vigorous prosecution of the war, under an hypocritical pretense that his action was dictated by a controlling desire to preserve the rights of the States from federal usurpation.

The motto of the State of Illinois is "State Sovereignty and National Union," which, properly understood, is, in my estimation, the best and most beautiful motto which adorns the armorial bearings of any State in the Union. I am for unlimited state sovereignty in the true sense: in the sense that the State is to control and direct all its municipal and local legislation; and I would be among the first to resist all attempts upon the part of the Federal Government to interpose tyrannical usurpation of power in controlling the legislation of the States. The States are sovereign, in every sense in which it is desirable they should have sovereignty: that is, the people know and understand their immediate wants, social, agricultural, commercial, mechanical, educational, municipal; and the interference of Congress, except in aid of these, with the consent of the people of the States, would be a flagrant abuse of power, which every patriot son of Illinois would resist with all

his energies, and *all* his life. But how immensely absurd is the idea that the people of the States should unite together, and form a written constitution, and constitute a national government, with representation from the people from every State, and confer upon that government all the powers of peace and war, and every power, in fact, which affected the safety and prosperity of all the States, and all the people, as one nationality, and constitute a Congress to make the laws necessary for the government of the whole—an executive, chosen from all the people, to execute the laws, and a judiciary composed of men, residents of the different states, and declare the constitution and laws the supreme authority in the land, to decide the questions at variance between the government and the States, and between the several States themselves, and yet admit that any State may, at its mere pleasure, peaceably withdraw from the Union. Such was the doctrine of the old confederacy. The States first formed a confederacy in the nature of a mere league; but, being found ineffectual, a constitution was formed by the people of the States for a more perfect union, for the express purpose of doing away with the principle of unlimited State sovereignty.

I hail it as the most important result of our glorious war that the doctrine of the fathers has been re-asserted, and that, while we are opposed to a monarchy or to a consolidated government, which would ignore the existence of state sovereignty, yet we recognize as essential to union and national perpetuity, the centralization somewhere of a power which shall be the arbiter in the case of disagreement between the States. Otherwise, indeed, our government is a rope of sand. If any one will carefully study the form of our government, he will see the necessity of the checks and balances which our fathers threw around it; for there are two powers in constant and increasing conflict, and if a fair equilibrium is not maintained, the government is lost. In the solar system, the sun holds the planets in their orbits, and, but for its power, each planet would fly off darkling through the realms of space; but if its power were uncontrolled, and above all the laws of forces and equilibrium, it would, by the force of natural gravity, draw every planet headlong into the central orb, which would be consolidation, and resemble the despotism and powers of Europe. But, on the other hand, if the sun were to lose its supremacy altogether, and the planets should become the supreme forces, they

would fly off lawless through the void, producing wild anarchy in the solar system, which nothing but the Almighty Power, who created them and all things, could subdue. Our only safety is in the hope that these forces, in our State and national governments, will balance each other; that, in strict obedience to constitutional law, the States will perform their duties to their own citizens, to each other, and to the whole nation; and that the national government will commit no usurpation of state privileges. The careful observer of our government will perceive that the tendency is not to consolidation, but to anarchy and dissolution. The rapidity in growth and population of the States, makes them feel their consequence and strength more, and their dependence less sensibly on the Federal Government; like the high-spirited youth who feels less dependent, from day to day, as he approximates the age of his majority.

Indeed, we may say that our government is fearfully and wonderfully made, and the great machine of state must move, self-poised, magnificently onward between the dead calm of consolidation and the convulsions of anarchy and disunion.

The late election has settled all disputed questions. It is settled that traitors may be arrested and hung; it is settled that the first duty of every citizen is to his country, and that he may be drafted into the military service; it is settled that men, irrespective of color, may be employed in the military service of the country.

But, again, this election has settled the great question of slavery. It has indorsed the proclamation of the President, and all the measures of his administration tending to the emancipation of the slave. Whatever may have been the sentiment of the American people heretofore on the subject of slavery, it cannot be denied that they have fully resolved that it must cease to exist in every State and Territory of the Union.

I have ever believed that the slavery question was the source of all our national troubles; that it was at war with the genius of our institutions, and that we can never have permanent peace and a harmonious Union without its thorough eradication; and while statesmen of the highest standing, and many good men everywhere, have feared lest radical measures might endanger the unity of the friends of the government, and that some end short of radical and universal emancipation was the best policy of the govern-

ment, and necessary to the preservation of the Union, yet I have ever believed, and now believe, that it is in the councils of a higher power than man that this rebellion will know no end except upon the basis of unconditional and universal emancipation. In fact, I may go further and say that I scarce desire to see this war terminated with this disturbing element left to divide our councils, to embroil citizen against citizen and State against State, to result in another bloody war and perhaps in final disunion. I do not desire to see the war terminated until it shall be a recognized fact—recognized not only by our own government, but by the Confederate States, including both government and people, and be made patent to all the civilized nations of the world, that not under the constitution of the United States—not under any constitution or law of any seceded State—not under any decision of any legal tribunal, State or National—and not even in any conventional, moral, social or individual sense, shall the relation of slave and master, in the form of absolute submission on the one hand and uncontrolled ownership on the other hand, be recognized upon any portion of North American soil. Blindly reeling and tottering beneath the blows it has already received, it is our duty to give this accursed wrong and cause of all our sufferings a final blow, and send it to a grave from which it will have no resurrection. When the shout of victory comes to us from Grant, or Sherman's armies, we rejoice, because we consider each victory brings us nearer peace and the restored authority of the government. We rejoice when we hear that Atlanta, Mobile or Savannah is ours, but I shall consider peace nearer when, either through the legislation of Congress or from the act of our armies, or of the rebels themselves, slavery is destroyed. It is significant to me of victory when I see the recent movement of the south towards organizing the negroes into regiments, putting arms into their hands, and giving them their freedom. It is a strange phenomenon in history: the leaders of an insurrection calling upon the cause of that insurrection to save it. Driven to madness and despair, they themselves commence putting down their "divine institution" for which they commenced the war. Providence is shaping their destiny so that with their own hands they shall bring to destruction the very thing that they meant to maintain, and which they designed to make the permanent corner-stone of their new confederacy. Of what use

will a new government be to the rebels when their slaves are free, and when they can have no use for it?

I am for freeing the negro by every constitutional means; and I believe, as I ever did, that had the seceded States behaved themselves—had they been true and loyal to the Government—they had from all the people of all the loyal States an unfailing guarantee of non-intervention in their domestic institutions. Indeed, very few if any prominent statesmen believed that Congress had any power whatever to interfere with the institution of slavery. But what government may lawfully do, in time of peace, against its own citizens who are loyal to the government, and what it may lawfully do towards those citizens in time of war, when they themselves have thrown off their allegiance to the government, and become open and diabolical enemies of that government, is quite another thing. To illustrate: the humblest American citizen has rights which the whole American government and all the powers of darkness cannot deprive him of while he is a good, loyal citizen and obeys the laws of his country. To him, personal liberty and protection is a sacred right, which the lordliest in the land dare not infringe with impunity; but if he violates the law—if he commits theft or murder—if he becomes an outlaw—then he may be deprived of his personal liberty. So, although it was in the bond that slavery should not be interfered with in the States, yet when those States and the people break the bond—trample the very constitution and laws, which were the shield of their protection, under their feet—deny their allegiance to that constitution, take up arms to overthrow the government, and become the public enemies of the country—then the government may take that man's life, or his property of any and every kind, if necessary, to compel his submission and save the government. And, therefore, I have no doubt of the power of Congress, in such a case, to pass a broad, manly act of emancipation, breaking the chains of every slave in every seceded State; and my doctrine is the immediate, total abolition of slavery in every seceded State.

Of course, Congress would have no power to abolish slavery in the loyal and adhering States, without their consent, and hence the necessity of an amendment to the constitution, by which slavery shall be abolished in every State, loyal as well as disloyal, under the forms and in the manner prescribed by the Constitution—and thus free the whole land forever from the everlasting curse of

human bondage. It will be one of the earliest duties, I trust, of your honorable bodies, to urge upon Congress immediate action upon the proposed amendment of the constitution abolishing slavery throughout the United States. During the last session of Congress it passed, by a majority of two-thirds in the Senate, both the Senators from Maryland, both the Senators from West Virginia, and both the Senators from Missouri, and a large majority of the Senators representing slave States voting for it. In the House it failed for want of a two-thirds vote, and lacked only eleven votes of passing, so that, although the same Congress is to sit again this winter, yet so emphatic has been the verdict of the people in its favor, as to induce the belief that there will be enough members, who opposed it before, to conform to the national will and carry it through the present Congress; but if they do not, then the next Congress, already elected upon that issue, will carry the measure triumphantly through. Then it will be part of the organic law of the republic, wiping out the last blot upon the fair charter of our freedom—universal freedom for all—everywhere under the folds of our starry banner.

It is perhaps difficult to tell in how many new and different phases the question may during the next two years assume—how many plans for gradual or half-way emancipation—how many compromises may be devised by politicians, but I confidently trust that the voice of Illinois shall be ever living and potential, through her honored representatives in the General Assembly, for the most direct and shortest route to radical and universal emancipation.

Anothor lesson taught by the late election was, that the war shall be vigorously prosecuted until every armed rebel shall lay down his arms and submit to the rightful authority of the government, and until our national flag shall wave in triumph over all our broad territory in all its geographical bounds, one and unbroken, from gulf to gulf, and from ocean to ocean. The triumph of the war policy at the polls is the triumph of the war itself. It never has been a question in the mind of any sound statesman or general, whether we had the power to conquer the rebels into obedience to the government; the only question was whether we would do it—and we have now decided the question of the result of the war by the emphatic announcement of the people that they intend to fight the war through—yes! fight it through, and settle all ques-

tions in dispute for all time to come. No one can fail to admire the wisdom and humanity of the President in his late message, wherein he says, in substance, that while he declines to hold out terms of negotiation to the insurgent leaders, yet he holds out the olive branch of peace to the masses who follow their leaders, and tell them that "they can at any moment have peace by laying down their arms and submitting to the national authority under the constitution." He says, "the door has been and is still open to all, but the time may come, probably, when public duty shall demand that it be closed, and in lieu, more vigorous measures than heretofore shall be adopted."

Now is a time, if ever, the nation can afford to be magnanimous, in view of our great strength and the unanimity of our people, as expressed at the recent election—in view of the fact that the enemy is everywhere close pressed by our conquering legions— we can now, not taking counsel from our fears, but from our magnanimity and with the power of conscious strength, knowing that our final triumph is but a question of time, we can invite the deluded masses of the south to lay down their arms and come in again to share the protection and blessings of the government.

But in the mean time every effort should be made to push forward vigorously the car of war. Not for one moment should the executive stay his strong military arm in the suppression of the rebellion. The greatest calamity which could befall this country now; in fact the greatest danger to be apprehended is that, from the very consciousness of our strength and the speedy prospect of success, we may relax our efforts, and the war become a protracted, lazy, heavy, draggling war. Should such be the case, there is no telling what may be the final issue—what demoralization may seize our army—what divisions may spring up among the people—at what time foreign nations may consider it their duty to intervene, and finally what disgraceful compromise and dishonorable peace may be brought about, leaving all the blood and treasure of four years' terrible war to have been expended in vain. The only hope of the enemy is that we will fail to follow up the advantages already gained. If ever, *now* is the time to press forward with overwhelming demonstration of our national power and forces to the goal of speedy and final victory. *Onward* with the war. The people should demand it; every legislative assembly should press it upon Congress; Congress should press it upon the President, and the President upon

the Generals in the army; the whole nation should wake up to the one great purpose, and resolve that there shall now be no lagging in the war. And while we hold out the words of kindness and the olive branch of peace to the south, let us resolve upon quick, sharp, decisive war, and besides paying liberal bounties to our soldiers at home, let us adopt the ancient mode of war, hold out to our boys in blue the sunny fields of the south, capture the territory, divide the lands among the soldiers, to be held by them and their heirs in fee simple forever. We have long held out this same olive branch by the proclamations of the President. The only answer has been insult and injury. The most savage cruelties have been heaped upon our prisoners in the hands of the enemy, and from Jeff. Davis has come the bold and defiant language that he will never consent to any peace—his voice is still for war until the United States shall acknowledge the independence of the Confederate States." Now I am here to-day to say in behalf of the loyal millions of Illinois, and I trust this General Assembly is prepared to say, and to throw in the face of Jeff. Davis and of his minions, and of all traitors who would destroy our Union, the determined response that in the booming thunders of Farragut's cannon, in the terrible onslaught of Sherman's legions, in the flaming sabres of Sheridan's cavalry, and in the red battle glare of Grant's artillery, our voice is still for war—war to the knife—all the dread enginery of war—persistent, unrelenting, stupendous, exterminating war, till the last rebel shall lay down his arms and our flag float in triumph over the land.

Upon the subject which agitates the minds of many, whether the north and south, after such deadly strife, can ever resume friendly relations and live in harmonious fellowship in one Union and under the same government, is a question which has never given me any doubt. Slavery has been the only ground of bitterness and division. All other questions were political and commercial, which all were ready to submit to the common arbitrament of the ballot; but the question of slavery was social, domestic and organic, and perhaps like all the questions involving the rights of man and the principles of liberty, which have engendered bloody wars in all ages and all nations. There could have been no solution to this question, except the war which has grown out of it. But slavery once removed, there will be an homogeneousness of sentiment, having the effect to bind together the north and the south.

The tides of emigration are already thrown into new channels. Emigration from the south to the north and from the north to the south now crosses each other at all our commercial points on our rivers and along all our thoroughfares of trade.

The black wall of slavery, which, like a frightful specter, drove the emigrant from the sunny fields and rich savannahs of the south, is, or soon will be, broken down—the process of intermixture, intermarriage, reciprocal business and commercial relations, will assume the place of the unsocial isolations which have heretofore divided the sections. And though the war has been bitter and bloody, yet the history of most nations of Europe teaches that they have survived long and bloody civil wars, and yet afterwards lived in peace and harmony under the same government. Such is the history of France, after her revolution. The civil war of England, in the memorable days of Cromwell, was marked by scenes of violence, of confiscation of property, of devastation of estates and desolation of towns and cities, as intense and terrible as those which have marked the progress of our civil war. Upon the re-establishment of the government, the people became united, and every memory of the rancour of the war soon disappeared. And so, after the vindication of our national authority, each section awarding to the other the credit due to lofty and indomitable prowess, like friends who have fought it out and are better friends ever after, so will the north and the south bury the memory of their wrongs. Massachusetts and Illinois will again reunite with Virginia and Georgia over the grave of treason, and, together with the new-born sisters of the confederacy, will live on in the bonds of a new brotherhood; and, with fresh allegiance to the constitution, and an unfailing faith in the proved strength of our institutions and man's capacity for self-government, strengthened and reassured by the baptism of blood through which the nation has passed, they will move on as one people, united forever.

Such is to be the end of events passing before us; and I trust that the people of the United States, and their posterity, while they offer up praises and thanksgiving to Almighty God for the deliverance he has brought to our people out of this red sea of blood—they will bless with a nation's gratitude, from age to age, the memories of the brave men who have periled all for their country in

its dark and trying hour. And when our own Illinois, upon some national holiday, shall meet all our returning soldiers, as they shall pass in serried ranks, with their old battle scarred banners and shivered cannons, and rusty bayonets and sabres—with rebel flags and rebel trophies of every kind—at this mighty triumphal procession, surpassing the proudest festivals of ancient Rome and Greece, in their palmiest days, then the loud plaudits of a grateful people will go up: All hail to the veterans who have given our flag to the God of storms, the battle and the breeze, and consecrated our country afresh to union, liberty and humanity.

Gentlemen of the General Assembly: In taking my leave of the high responsibilities of the executive of this great State, I can congratulate you and the people that the administration of its affairs will pass into the hands of a successor who is fully competent to the trust committed to his care—who has given the highest evidence of devotion to the country, by both distinguished civil and military service—and in whose great ability, sound judgment and unswerving integrity I have the most entire confidence.

I cannot fail here to refer in kindness and gratitude to Lieutenant Governor Hoffman, who has been my constant adviser and counselor, and who has acted as Governor in my absence, with great ability and efficiency; and to my associate State officers, Hon. Jesse K. Dubois, Hon. O. M. Hatch and Hon. William Butler, to whom I am deeply indebted for wise counsel and cordial co-operation in important matters of my administration. Also, to Quartermaster General Ex-Governor John Wood, and Commissary General John Williams, for most indefatigable and efficient service; and also to the aid-de-camps in my office, and in the office of the Adjutant General, and to the clerks in all the departments of the State government, for their faithful and useful labors.

I must be indulged in saying that, while, doubtless, many omissions have occurred, and many errors have been committed, yet my labors have been severe and arduous, and that perplexities of a most difficult and unusual character, growing out of the unsettled condition of the country, have met me on every hand—among which was lack of co-operatien in a co-ordinate branch of the government, and the want of adequate appropriations required in the new emer-

gencies to be met by the Executive. However, I shall never regret the anxieties, cares and responsibilities which have devolved upon me, if, in some degree, I have discharged the high trust committed to me to the satisfaction of the people of the State.

RICHARD YATES.

January 2, 1865.

MESSAGE

OF HIS EXCELLENCY,

RICHARD YATES,

GOVERNOR OF ILLINOIS,

IN RESPONSE TO RESOLUTIONS OF THE HOUSE OF REPRESENTATIVES, OF JANUARY 6, 1865, IN RELATION TO THE

CLAIM OF ILLINOIS AGAINST THE UNITED STATE

FOR TWO PER CENT. OF THE NET PROCEEDS ARISING FROM THE SALE OF PUBLIC LANDS.

SPRINGFIELD:
BAKER & PHILLIPS, PRINTERS.

1865.

MESSAGE.

EXECUTIVE DEPARTMENT,
Springfield, Illinois, January 10, 1865.

To the Honorable the House of Representatives:

In response to certain resolutions adopted by the House of Representatives, on the 6th instant, having reference, as I understand them, to the claim of Illinois against the United States for two per cent. of the net proceeds arising from the sale of public lands, which was reserved in the compact between the United States and Illinois, to be expended, under the direction of Congress, in constructing roads leading to the State, I have the honor to communicate the facts in relation to the claim made by the State and my action in connection therewith, together with such suggestions as, in my opinion, will fully enable the State to arrive at a just conclusion on the subject.

In 1818, Congress passed an act to enable the people of Illinois Territory to form a constitution and State government, and for the admission of such State into the Union. The sixth section of that act offered four certain propositions to the convention of said territory, when formed, for their free acceptance or rejection, and which, if accepted by the convention, should, as the law expressly declares, "*be obligatory on the United States.*" These propositions were accepted, and the conditions upon which they were made strictly observed, by which the State lost a large amount of revenue in refraining to tax the public lands for five years from and after the day of sale, and the patented lands for three years after the date of the patents, respectively, where they were continued to be held by the patentees or their heirs, as an equivalent for this, and not as a gratuity or donation. The third proposition declares "that five per cent. of the net proceeds of the lands lying within such State, and which shall be sold by Congress, from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: two-fifths to be disbursed under the direction of Congress, in making roads leading to the State, the residue to be appropriated by the Legislature of the State for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university."

The three per cent., thus set apart to the State, for educational purposes, has been, from time to time, paid over by the United States, but not a dollar of the two per cent., set apart for road purposes, has ever been paid; nor can it be shown that it has been expended in a manner required by the trust. The money, as it accumulated in the treasury, belonged to the State, and Congress was only empowered, as trustee, to disburse it in conformity to the terms imposed upon them. It has not been pretended that the money was used in "making roads leading to the State." The Interior Department has, however, claimed that the State should be charged with the sums expended within her limits on the National or Cumberland road, while the Treasury Department, where such matters are properly cognizable, has never made a charge of such character against the fund. While my limits forbid a discussion of the ground assumed by the Interior Secretary, I feel it my duty to say, I believe it wholly untenable, and it certainly operates very unjustly towards the State.

A provision, setting apart five per cent. of the net proceeds arising from the sales of public lands, will be found in the enabling act of each new State admitted into the Union, in which such lands were situated, or in the act providing for such admission, barring California; and, with three exceptions, each State to which the amount was granted received it in money from the National treasury, and disposed of it by their own legislative enactments. Congress did not attempt to execute the trust, but transferred it to the Legislatures of the states respectively. The three exceptions, referred to, are Ohio, Indiana and Illinois. Their road fund of two per cent., together with that of Missouri, which was subsequently paid over to that State, was reserved by certain acts of Congress, to reimburse the treasury for appropriations made out of it to construct the National road, but not in a manner warranted by the trust. Ohio and Indiana, however, by solemn acts of their legislatures accepted the portions of the road lying within their respective limits, upon which some three and a half millions of dollars were expended, and have derived a revenue from them. Illinois never adopted such legislation; never recognized the work done within her boundaries as of any value, and never, in any way, made an appropriation of it, so that she, of all the States, has derived no advantage from the road fund set apart for her benefit, either in the way of expenditures or receipts of money.

If Congress had kept its faith and constructed the road, as it provided should be done through Illinois, instead of abandoning the enterprise, after making a few wasteful expenditures between her eastern limit and Vandalia, the equity of the case would be vastly different; though, even then, it could not be properly and justly insisted that the fund set apart for the *special benefit* of the State, and for which she had rendered a full equivalent, could be legally absorbed by Congress in a great National work, undertaken and prosecuted for the common benefit of the whole United States, especially in view of the fact that she had never accepted of such legislation.

From whatever point the subject may be contemplated, it seems to my mind clear that the State is entitled to receive from the United States the amount of her claim. That there is ample legislative provis-

ion requiring the payment I have as little doubt. The second section of an act of Congress, approved March 3, 1859, entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States," makes it the duty of the Commissioner of the General Land Office to settle the account of Illinois, as one of the "other States"—allow and pay it. However, it is not necessary that I should enter into an argument upon this point with the Legislature. There can be but one mind among us on the subject.

As early as 1857, Hon. Isaac N. Morris, then a member of Congress from Illinois, commenced the prosecution of this claim before the Land Department, at Washington, and obtained the promise of that department that it should be adjusted and paid; whereupon, he sent a copy of his correspondence with the commissioners to his excellency Governor Bissell, and suggested the propriety of the appointment of an agent on behalf of the State to attend to the settlement of the account. Governor Bissell requested him to do it. Soon after my term of office, as executive of the State, commenced, Mr. Morris spoke to me upon the subject, and subsequently made a presentation of the laws and facts upon which he claimed the money was due the State. Upon an investigation of the matter I became satisfied his views were correct, and, inasmuch as he had, after great patience and labor, entirely familiarized himself with the whole subject, I deemed it my duty to appoint him to prosecute the claim for the State. He has submitted to me three different reports, pertaining to the business with which he was entrusted—two in printed form and one in manuscript—which are herewith transmitted, and to which I respectfully call your careful attention. These reports will be found very full, and exhibit clearly and conclusively the right of the State to payment of the claim.

The difficulties surrounding the prosecution of claims against the General Government, at this period, have environed Colonel Morris on all sides, yet he has brought to the discharge of his intricate and difficult mission the great skill and persistent industry requisite to success; and I feel, that for his distinguished fidelity and consciencious labors, the State is greatly indebted.

I recommend that the Legislature make a firm expression of their opinion in behalf of the claim of the State, and that a reasonable appropriation be made to defray the expenses of its prosecutor.

Respectfully,

RICHARD YATES, *Governor.*

REPORT OF THE HON. I. N. MORRIS,

ON THE

TWO PER CENT. FUND,

MADE TO HIS EXCELLENCY RICHARD YATES.

REPORT.

To His Excellency, Richard Yates,
Governor of the State of Illinois:

Sir — I beg leave most respectfully to submit to you a partial report in the matter of the two per cent. fund arising from the net proceeds of the sales of public lands made within the State since January 1, 1819. In making this report I cannot, in view of the public interest or justice to myself, embrace in it all that it might be important and valuable to communicate. Hence I shall do but little more now than compile the record as far as it is made up, and add such observations as will be necessary to explain its different parts. On some future occasion I may transcend these limits.

Soon after my election to the 35th Congress, I entered upon an investigation of the claim of Illinois against the United States, for the two per cent. on the public lands sold in the State, and set apart in her enabling act "to be disbursed under the direction of Congress, in making roads leading to the State." The result of that investigation was to satisfy me that the amount was due the State, and that existing legislation required its payment. Consequently in a day or two after my arrival in Washington in December, 1857, I opened a correspondence upon the subject with the Hon. Thomas A. Hendricks, then Commissioner of the General Land Office, which is hereto subjoined:

Washington City, *December* 12, 1857.

Hon. Thomas A. Hendricks,
Commissioner of the General Land Office:

Sir — Will you have the goodness to communicate to me, at your earliest convenience, the gross amount of two-fifths of the five per cent. of the net proceeds of the public lands sold in the State of Illinois, to which said State is entitled for road purposes, under and by virtue of the third proposition contained in the sixth section of "An act to enable the people of the Illinois Territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, approved April 18th, 1818."

Yours very respectfully,

I. N. MORRIS.

GENERAL LAND OFFICE, *December* 17, 1857.

HON. I. N. MORRIS,
House of Representatives:

SIR — I have the honor to acknowledge the receipt of your communication of the 12th instant, in reference to the three per cent. accruing to the State of Illinois under the provisions of the act of Congress, approved April 18th, 1818, and in reply have to state that the amount for the year 1856, was adjusted on the 27th July last, and forwarded to the First Comptroller of the Treasury for his decision thereon. The balance found to be due the State on the 31st of December, 1856, under the provisions of the said act amounted to $13,791 69.

I am sir, very respectfully,
Your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

WASHINGTON, H. R., *December* 19, 1857.

HON. THOS. A. HENDRICKS,
Commissioner of the General Land Office:

SIR — I have the honor to be in receipt of your reply of the 17th to my letter of the 12th instant, and allow me to say that you either greatly misapprehended my communication, or I made a great mistake in writing it. I think if you will refer to it again, you will find the error is with you. I did not inquire for the amount of the three per cent. accruing to the State of Illinois under the provisions of the act for her admission into the Union, but desired to know the gross amount of the two per cent. to which said State is entitled for *road* purposes by virtue of said act.

Your early answer to that interrogatory will greatly oblige me.

I have the honor to remain, sir,
Yours very respectfully,

I. N. MORRIS.

GENERAL LAND OFFICE, *December* 23, 1857.

HON. I. N. MORRIS,
House of Representatives:

SIR — I have the honor to acknowledge the receipt of your communication of the 19th instant in reference to the two per cent. to which the State of Illinois is entitled under the act of 1818.

In reply, I have to state that the amount will be adjusted at as early a day as practicable, and the information you desire will be transmitted to you.

I am sir, very respectfully, your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

WASHINGTON CITY, *January* 7, 1858.

HON. THOS. A. HENDRICKS,
Commissioner of the General Land Office:

SIR — On the 12th and 19th of last month, I had the honor to address you, inquiring for the gross amount of the two per cent. arising from

the sales of public lands within the State of Illinois, to which said State is entitled by virtue of the act for her admission into the Union. Not having received an answer communicating the desired information, owing, as I am told, to the indisposition of the clerk whose duty it is to furnish it, I have to ask of you whether you will be prepared on the proper application being made to pay over to said State the aggregate amount of said two per cent. when the same shall be ascertained, as required by "An act to settle certain accounts between the United States and the State of Mississippi, and other states," approved March 3, 1857, and the said act of admission. Your early answer will greatly oblige me.

I remain, sir, yours, very respectfully,

I. N. MORRIS.

GENERAL LAND OFFICE, *January* 8, 1858.

HON. I. N MORRIS,
House of Representatives:

SIR — I have the honor to acknowledge the receipt of your letter of yesterday, in which you inquire whether the government will be prepared to pay over to the State of Illinois the two per cent. fund, to which she will be entitled in virtue of the act of April 18, 1818, for her admission into the Union, when the same shall have been ascertained, as required by the act of the 3d of March, 1857, and the said act of admission.

In reply, I have to state that the amount you refer to shall be adjusted as soon as the great pressure of business will admit of it, and I am not aware of any reason for withholding payment of the amount to which the State may be entitled when the same shall have been ascertained.

I am, sir, very respectfully, your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

WASHINGTON, *January* 9, 1858.

HON. THOS. A. HENDRICKS,
Commissioner of the General Land Office:

SIR — I had the honor to receive, this morning, your letter of yesterday in reply to mine of a previous date. In alluding to my inquiry whether you will be ready, when the aggregate amount is ascertained, to pay to the State of Illinois the two per cent. to which she is entitled on the sales of public lands made within her limits, and to which I have, in previous communications, more particularly called your attention, you say, "I am not aware of any reason for withholding payment of the amount to which the State may be entitled when the same shall have been ascertained."

As I design to transmit to the Governor of my State our correspondence for his consideration, I shall be happy to have all doubts as to your determination removed. The language which I have above quoted from your letter, while I have no question in my mind of its purport, may be regarded by some as ambiguous, and with a view of removing any misapprehension as to its meaning, I will be exceedingly obliged if

you will state definitely whether the amount will be paid upon the same being fully adjusted.

I remain, dear sir, very respectfully,

I. N. MORRIS.

GENERAL LAND OFFICE, *January* 13, 1858.

HON. I. N. MORRIS,
House of Representatives:

SIR — I have the honor to acknowledge the receipt of your communication of the 9th instant, in which you request that I will state more definitely than I did in my letter of the 8th instant, whether the amount of the two per cent. fund to which the State of Illinois may be found to be entitled, will be paid on the account being fully adjusted. In reply, I have to state that I cannot give any more positive assurance than is contained in the communication referred to by you; and for the reason that it is only the province of this office to audit the account and report the balance which may be found to be due to the State, to the First Comptroller of the Treasury, who is charged by law with the revision of accounts as the controlling officer, and who will have the sole direction in regard to the payment.

I am, sir, very respectfully, your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

Upon the receipt of the letter of the Land Commissioner to me of the 13th, I transmitted copies of the correspondence to Governor Bissell, as will appear from the following letter from me to him, and his reply:

WASHINGTON CITY, *January* 16, 1858.

HIS EXCELLENCY, WM. H. BISSELL,
Governor of the State of Illinois:

SIR — I transmit herewith copies of communications between myself and the Commissioner of the General Land Office, which will explain themselves.

You will observe that the correspondence closes for the present, with the Commissioner's letter to me of the 13th instant. After its receipt, I called at the Land Office, and urged, personally, that the account of the State against the general government for the two per cent. fund should be adjusted as soon as possible, and was assured no time should be lost in stating it. I therefore concluded that no benefit could result to the State by a further correspondence, and hence terminated it.

It will be perhaps six weeks before the account will be made up. I shall keep an eye to the matter, and about the time, or just before its completion, will apprise you of it, so you can at once cause the proper demand to be made on the treasury for the money. In the meantime, I hope to receive such suggestions and instructions from you as you may think proper to give.

Col. Miller, State Treasurer, was here a few days ago, and I communicated my action in the premises to him, and was glad to find it met his approval, and trust it may yours. I wish you to talk with him on the subject.

I remain yours truly,

I. N. MORRIS.

SPRINGFIELD, ILLINOIS, *January* 22, 1858.

DEAR SIR—I am very much obliged for a copy of the correspondence lately had between yourself and the Commissioner of the General Land Office.

You have acted well, indeed, in bringing this matter to our attention, and your perseverance has already brought an apparently reluctant officer to the proper point. I have no suggestions to make, and only request that you will exercise your own judgment in regard to the proper time for renewing your efforts, and that you will keep me apprised of the progress of the matter.

Yours very truly,

WM. H. BISSELL.

HON. ISAAC N. MORRIS.

After admitting the legality of the claim of the State and agreeing to have the account made up for presentation to the treasury, Mr. Hendricks declined further action in the matter, and never did explain to me the reason why. I supposed at the time, that inasmuch as he was a member of Mr. Buchanan's administration, he refused to comply with his assurance to me that the account should be stated, for the reason that the Democratic members of Congress from Illinois had fallen out with that administration, the consequence of which was that as little was granted to them as possible. While the foregoing consideration doubtless had its full weight in preventing an act of justice to the State, I subsequently learned upon high authority that Mr. Buchanan had issued *private* instructions to the different departments not to pay any claim or demand on the government which could be postponed or defeated, with the view of lessening the expenditures of his administration.

The foregoing statements will explain why the matter was not closed up in Mr. Buchanan's time.

The laws upon which I based the claim of the State in my correspondence with Mr. Hendricks, and upon which I still rely are as follows:

CHAPTER CXXXIX.

An act to settle certain accounts between the United States and the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Commissioner of the General Land Office be, and he is hereby required, to state an account between the United States and the State of Alabama for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, under the sixth section* of the act of March

* The following is the third condition of the sixth section of "An act to enable the people of the Alabama territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original states, approved March 2, 1819, and is the only portion of the 6th section of the act relating to the five per cent. on the public lands."

"That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress, from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same,

second, eighteen hundred and nineteen for the admission of Alabama into the Union; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Chocktaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State five per centum thereon, as in case of other sales.

Approved March 2, 1855.

CHAPTER CIV.

An act to settle certain accounts between the United States and the State of Mississippi* and other states.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Commissioner of the General Land Office be, and he is hereby required to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled on account of the public lands in said State, and upon the same principles of allowance and settlement as prescribed in the "Act to settle certain accounts between the United States and the State of Alabama," approved the second of March, eighteen hundred and fifty-five; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw and Chocktaw Indians within the limits of Mississippi, and allow and pay to the said State five per centum thereon, as in case of other sales, estimating the lands at the value of one dollar and twenty-five cents per acre.

§ 2. *And be it further enacted*, That the said commissioner shall also state an account between the United States and each of the other states† upon the same principles, and shall allow and pay to each State

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shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the said State under the direction of the Legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress."

* The 5th section of an act to enable the people of the western part of the Mississippi Territory to form a constitution and State government, etc., approved March 1, 1817, is as follows:

"That five per cent., of the net proceeds of the lands lying within said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said State, under the direction of the Legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under direction of Congress."

† The act admitting Illinois into the Union, entitled "An act to enable the people of the Illinois Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original states," approved April 18, 1818, says in section 6, condition third:

"That five per cent. of the net proceeds of the lands lying within such State, and which shall be sold by Congress, from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: two-fifths to be disbursed under the direction of Congress, in making roads leading to the State, the residue to be appropriated by the Legislature of the State, for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university."

such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.

Approved March 3, 1857.

After Mr. Buchanan's administration had refused justice to Illinois, I introduced a bill into the House of Representatives to compel the payment of the amount due the State, not that I believed such legislation necessary, except to remove the obstacle created by the refusal of reluctant officers to do their duty. The bill passed the House in a modified form at the last session of the 36th Congress, and was sent to the Senate, where, on motion of Senator Fitch, it was referred to the committee on the judiciary, who never reported it back. I urged, time and again, upon Senators Douglas and Trumbull, to get the bill before the Senate and pass it, but it was never done; for what reason it is not necessary to inquire.

Thus the matter stood at the time of Mr. Lincoln's inauguration. At that period I met your Excellency in Washington City, and as I was going out of Congress, and not expecting to be able to give any further attention to the subject, I communicated the facts to you, and suggested that you should appoint some one to look after the interest of the State, as she was certainly entitled to the money I claimed for her. You requested me to send you a copy of my correspondence with Mr. Hendricks, (the original of which is of course on record in the General Land Office, as it is of an official character,) and I promised to do so. Soon after my return home, however, I was taken sick, and for eighteen months was not able to attend to business. In the meantime the war broke out, and I thought that perhaps you would conclude that a demand for the money had as well be postponed until the excitement consequent upon that event had somewhat abated. I concluded also that I could make you understand the facts more satisfactorily at a personal interview than by writing. It could not be expected you would remember them sufficiently distinct to act upon them from our hasty interview at Washington. I took the papers with me to Springfield two or three times during the latter part of the past year, but was never fortunate enough to find you at home. You were always absent on official business.

At the commencement of the last session of the Legislature we met, and conferred upon the subject. I submitted to you my correspondence with Mr. Hendricks and called your attention to the laws upon which I based the claim of the State. I am gratified to be able to add that you manifested a prompt, earnest, sincere, and highly commendable zeal for the interest of the State, and at once determined to prosecute her demand. Without solicitation on my part, you were generous enough to tender me an appointment as agent on behalf of the State, under which I repaired to Washington, arriving there on Saturday evening, the 7th of February, taking with me a letter from you to the President, explaining the object of my mission, and inviting his co-operation. On Monday evening following, I called upon his Excellency, delivered your communication, and conferred with him in regard to the nature and character of the State's claim. All that he appeared willing to do at the time was, and I think perhaps that was as far as he ought to have

gone, to indorse upon the back of your letter the following words, which I laid before the Commissioner of the General Land Office:

"I shall be obliged if the Commissioner of the General Land Office will give Mr. Morris a full hearing on the business indicated within, and do what may be directed by the law in the case. Please give Mr. Morris an early hearing." A. LINCOLN.

February 9, 1863.

On the same day I called upon the President, I addressed the following communication to the Commissioner of the General Land Office:

WASHINGTON CITY, *February* 9, 1863.

HON. J. M. EDMUNDS,
Commissioner of the General Land Office:

SIR—I am charged by his Excellency, Richard Yates, Governor of the State of Illinois, with the duty of prosecuting the claim of that State against the general government for the two per cent. fund due her under existing laws of Congress for road purposes. I therefore have to respectfully inquire if you will direct the account to be made up under "An act to settle certain accounts between the United States and the State of Mississippi and other states," approved March 3, 1857, and the enabling act preparatory to the admission of Illinois into the Union. Your early answer will greatly oblige me.

I have the honor to remain, yours very respectfully,

I. N. MORRIS.

Besides the foregoing letter I furnished the commissioner with a copy of the laws upon which I based the State's claim, and my interpretation of them. On the next morning I was informed by one of his clerks, who seemed to have charge of the business, that the commissioner and himself gave the same construction to the laws that I did, but that Mr. Joseph Wilson, chief clerk, whose opposition I had anticipated, differed with them. Believing the commissioner's views to be as I had been informed they were, I felt no great concern about the result, and was therefore, surprised to receive from him the subjoined letter:

GENERAL LAND OFFICE, *February* 13*th*, 1863.

SIR—I have the honor to acknowledge the receipt of your letter of the 9th inst., in which you inform me that you are charged by His Excellency, Richard Yates, Governor of Illinois, with the duty of prosecuting the claim of that State against the general government for the two per cent. fund due her under existing laws of Congress, for road purposes, &c.

In reply, I have to inform you, that I have carefully examined the several acts of Congress to which you refer in the memorandum which accompanied your letter above referred to, and all other acts of Congress relating to that subject so far as Illinois is concerned, and I do not find that Congress has relinquished its control over two-fifths of the fund set apart for certain purposes by the third clause of the sixth sec-

tion of the act of April 18th, 1818, vol. 3, page 430, and now claimed by Illinois.

The acts to which you refer relate to moneys received by the government for lands which had been reserved for certain Indian tribes.

The acts for the admission of the States of Alabama and Mississippi, and other acts of Congress in relation to this subject, are almost identical with the acts relating to Illinois, and it was necessary for those two States to have special legislation by Congress before they could control the two per cent. grant for roads, (see act of Congress of September 4th, 1841, sections 16 and 17, pages 457, 458, vol. 5.)

For the reasons here stated, this office is not, in my opinion, authorized to adjust to the credit of the State of Illinois, the two per cent. fund referred to, without further legislation by Congress on the subject.

Very respectfully,

Your obedient servant,

J. M. EDMUNDS,

Commissioner.

Hon. I. N. Morris, *Washington, D. C.*

Your Excellency will observe by reference to the letter of the commissioner that all he says about the laws to which I directed his attention, is that "the acts to which you refer relate to moneys received by the government for lands, which had been reserved for certain Indian tribes"—a very summary way, indeed, of disposing of so important a matter. My understanding is, that the government "*received*" no money for the lands referred to by the commissioner reserved for certain Indian tribes, but notwithstanding this paid to the States of Alabama and Mississippi the full five per cent. on those lands. It appears, therefore, that the commissioner mistook the fact as well as the law.

What, as he seems to suppose, two sections incorporated into the preemption act of 1841, relating to the five per cent. fund due Alabama and Mississippi, can have to do with the construction of the acts of 1855, and 1857, making no reference to the special legislation referred to, is more than I can discern. The commissioner seems to forget that the laws of 1855, and 1857, were passed *long subsequent* to the special legislation of 1841, and that the act of 1857, is a general act, intended for the benefit of *all the States*, and requires the five per cent. to be paid to each State. Is each State to be deprived of its rights under that act because some sixteen years before, Congress passed a special law for Alabama and Mississippi? The commissioner certainly cannot doubt but that Mississippi, if she had not previously received her five per cent. could receive all or any part of it under the act of 1857, and if Mississippi, why not "each of the other States?" The law so provides, and covers the original sum and all arrears due Mississippi and other States.

After the claim of the State had been decided adversely by the commissioner, I presented all the laws bearing upon the subject to the President, and at his instance read them over three or four times that their import might be fully and accurately comprehended. Fortunately, Judge Norton, a clear headed and able lawyer of Joliet, who is member elect to the 38th Congress, was present by accident. After a careful

consideration of the question, the President and Judge Norton gave it as their concurrent opinion that Illinois was legally entitled to the full five per cent. arising from the sales of public lands made within her limits since January 1st, 1819, under and by virtue of the act of 1857, for the settlement of the accounts of Mississippi and other States, and the provisions of the enabling act for our own State, thus fully and entirely sustaining the legal view I had always taken of the claim. The President at the interview referred to, was exceedingly kind and courteous, and very ready and frank in expressing his opinion, and I am gratified to be able to add that he has expressed that same opinion to various other persons, and among them to yourself. He said to you a short time ago when you were in Washington, and when you requested he should listen to the reading of my communication to the Interior Secretary, under date of March 10th, 1863, that he would have no objection, if his time would permit; that he had, however, gone over the premises with me once—that the *conclusion had been reached that the State was entitled to the money*, and it was not worth while to go over the premises again. I had two or three other interviews with him, to which it is not now necessary to refer in detail. What followed the one above indicated, the following letters will sufficiently show. I need not tell you how laborious is the task to accomplish any business in a department at Washington.

In pressing with zeal and ardor the Secretary of the Interior for a formal decision of the appeal to him from the Land Commissioner, I did no more than I believed my duty to the State required. You will observe the somewhat singular fact that I was unable to get written replies to my communications except from the Commissioner of the General Land Office. I was therefore compelled to make my calls and those of my friends sufficiently numerous upon public functionaries to make up a record myself, and I believe it will not be found the less incomplete or objectionable on that account. But to commence it:

WASHINGTON CITY, D. C., *February 18th*, 1863.

HON. J. M. EDMUNDS, *Commissioner of the General Land Office:*

SIR—I respectfully appeal from your decision in the matter of the application of the State of Illinois claiming from the United States the two per cent. on the net proceeds of the public lands sold in said State since 1819, and request that with the least possible delay you transmit the papers in the case to the Secretary of the Interior for review.

Respectfully, I. N. MORRIS,
Agent for said State of Illinois.

After the appeal was perfected and the case argued before the Interior Secretary, I transmitted to that officer the following letter, showing briefly as I had shown more *in extenso*, verbally, that the *subject* of legislation was the five per cent., and its application the public lands sold in the States, *including* Indian reservations, &c.; that it was the design of Congress to place all the new States in which there were public lands on an equal footing in regard to the five per cent. with Mississippi, Alabama and other States which had received it, and that the law of 1857

does so place them. All the time between the 19th of February and the 27th of March when sickness compelled me to leave for home, I spent in earnest endeavors to get the Interior Secretary to decide the appeal:

WASHINGTON CITY, *February 20th*, 1863.

HON. J. P. USHER:

SIR—It has occurred to me this morning that I would very briefly state, in writing, some of my views of the laws to which I referred last evening, in presenting the claim of Illinois to the two per cent. fund due her under various acts of Congress. I will, of course, only mention the points.

The 6th section of the enabling act of Alabama sets apart five per centum of the net proceeds of the public lands for certain purposes, three parts of which was left at the disposal of the legislature, and two parts to be expended under the direction of Congress.

"An act to settle certain accounts between the United States and the State of Alabama," approved March 2d, 1855, *requires* the Commissioner of the General Land Office to state an account "between the United States and the State of Alabama," for the purpose of ascertaining "what sum or sums of money are due to said State heretofore unsettled," under the said sixth section of the enabling act, and he is also *required* to "*include* in said account the several reservations under the various treaties with the Chickasaw, Chocktaw, and Creek Indians, and allow and pay to the said State *five per centum* thereon, as *in case of other sales.*"

The first thing required of the commissioner is, that he shall *state an account* between the United States and Alabama, under the sixth section of her enabling act, setting apart five per cent. of the net proceeds of the sales of public lands, which means all public lands sold in the State, and under which account the State could obtain the amount, if no other act relating thereto had ever passed. The Indian reservations are only *cumulative*, and the five per cent. is also required to be paid on those lands.

The act "to settle certain accounts between the United States and the State of Mississippi *and other States*," approved March 3d, 1857, requires the settlement to be made with Mississippi "on the same principles of allowance and settlement as prescribed in the Alabama act, and directs the payment of the five per cent. on the public lands" in said State, *adding* thereto the Indian reservations as in the case of Alabama.

The second section of the act relating to Mississippi, requires the commissioner to state an account between the United States "and each of the other States upon the same principles," that is, as is required by the act in regard to Alabama, "and shall allow and pay over to *each State* such amount as shall thus be found due." This section also provides that "ALL lands and permanent reservations," shall be valued at one dollar and twenty-five cents per acre. The title of the act itself, clearly shows it was designed to include all the States in which public lands had been or would be sold, and was intended to be, as it is, a *general public act.* Its language verifies this conclusion.

The laws to which I have referred were passed by Congress long subsequent to the acts relating to the National Road, and hence, if the States were ever deprived by previous legislation of any part of the two

per cent. which I do not admit, it was re-invested in them by the laws upon which I based the claim of Illinois, together with the enabling act relating thereto.

I have the honor, sir, to subscribe myself,

Your obliged friend,

I. N. MORRIS.

March 23d, I called at the Interior Department to learn the Secretary's conclusion, but he postponed the matter, saying among other things, that if he did decide the case and the money was paid, the Democratic members of Congress from Illinois would probably abuse the administration for it. I assured him to the contrary, and to put his apprehensions on that score at rest, and to show what their opinion was of the legal and equitable character of the State's claim, I procured the signatures of all the members of the last Congress, and Judge Norton, General Farnsworth and Col. Morrison's, members elect to the 38th Congress, to the letter given below, the original of which I filed in the Interior Secretary's office.

WASHINGTON CITY, *February 23d*, 1863.

HON. J. P. USHER, *Secretary of the Interior*:

SIR—In the matter of the appeal before you, in which the State of Illinois claims two per cent. of the net proceeds of the sales of the public lands sold in that State since 1819, we have to say that we regard the State as *legally* and *equitably* entitled to it under existing laws, and trust you will not hesitate to direct the account to be made up, with a view to its payment by the government.

Although the sum may be large, that of course cannot constitute a valid objection to the claim or furnish a reason for withholding the amount justly due, nor do we mention it under the supposition that any such consideration will at all effect the decision of the appeal.

Certainly no sound reason can be given why Illinois should not be placed on an equal footing with Louisiana, Mississippi, Alabama, Arkansas, Missouri, Michigan, Wisconsin, Kansas, Iowa and Minnesota, in respect to the five per cent. set apart in their enabling acts for the objects specified therein. The laws requiring the liquidation of the claim, Congress alone is responsible for, and no just censure can attach to the administration for executing them; on the contrary, its clear and undoubted duty is to give effect to their provisions. Blame might properly attach if it failed to do so.

Again appealing to you to act in the premises, we acknowledge ourselves,

Yours very respectfully,

J. C. ROBINSON,	A. L. KNAPP,
W. A. RICHARDSON,	L. TRUMBULL,
ISAAC N. ARNOLD,	P. B. FOUKE,
WM. J. ALLEN,	E. B. WASHBURNE,
W. KELLOGG,	O. LOVEJOY,
JESSE O. NORTON,	J. F. FARNSWORTH,
WM. R. MORRISON.	

Still the foregoing brought no decision of the appeal, and led to the production of the following letters and divers personal applications, which were alike unavailing without any justifiable cause for the delay, as I am pursuaded your Excellency will admit.

WASHINGTON CITY, *February* 27, 1863.

HON. JOHN P. USHER,
Secretary of the Interior:

SIR—I acknowledge the kind and courteous manner with which you listened to my presentation of the claim of Illinois to the two per cent. fund arising from the sales of public lands within her limits. Since that time, now some ten days, I have called twice at your office to learn your conclusion. On the first occasion you spoke of the amount being large, and expressed apprehension that the payment of it would create excitement, and asked that I would not urge a decision then. Being satisfied that the determination, when officially expressed, would be in favor of my state, and not wishing to be too importunate, I concluded that a few days' delay would only be a matter of personal inconvenience to myself, and hence readily yielded to your desire.

On the last occasion you still asked for further time, and expressed the fear that Mr. Chase, Secretary of the Treasury, might not be satisfied if such a sum as my state is entitled to was directed to be paid, and advised me to return home, leaving the question undisposed of. I answered I could not see what Mr. Chase had to do with the matter; that he was not charged with the execution of the law, his duty being merely a compliance with the demand on him for the money, and that I could not think of leaving here until the subject was finally acted on. You will, I am pursuaded, on a moment's reflection, be convinced I was right in this. To go to Illinois and report I left the claim pending on an appeal before you, would prove I was an unfaithful agent, and subject me, as it ought, to public disrespect. Under no circumstances could I think of doing so or abandoning the trust reposed in me.

To obey one law and fulfill one obligation is just as sacred a duty on the part of the government, as to obey another law and fulfill another obligation, for both are equally imperative, and leave an administration without any right or power of discrimination.

The mere question of the embarrassment of the treasury, cannot and ought not, and I am convinced will not be plead as an excuse for the non-compliance with a plain statute. I do not desire nor does my state, to injure the national credit or embarrass the government finances, but when will there be a more propitious moment than the present for the payment of the amount due? Already the state has been deprived of it for years, and, of course, has lost the interest upon it. Since 1857 I have been prosecuting the demand, and have orally explained to you why it has not heretofore been paid. Hence it is no new or sudden claim brought up at the present time from sinister motives. I trust therefore, you will direct the account to be made up as the law certainly requires of you.

As our communications have heretofore been of a verbal character, I think it best that hereafter they shall be in writing, for in that way

they will not only be more certain, but more satisfactory. This is especially important to me and the governor of my state, to whom I will of course make a full and accurate report, embracing the entire correspondence and papers of my actions in the premises.

Awaiting your reply, and believing it will not long be delayed, and feeling the utmost confidence that duplicate legislation will not be demanded to compel the general government to do justice to a sovereign and loyal state,

I have the honor, dear sir, to subscribe myself your friend and obedient servant,

I. N. MORRIS.

WASHINGTON CITY, *March*, 2, 1863.

HON. JOHN P. USHER,
Secretary of the Interior:

SIR—My interview with you on Saturday left a deep and unpleasant impression on my mind. For the first time, you suggested that the case relating to the business of my state was not perhaps properly before you on an appeal from the Commissioner of the General Land Office, inasmuch as all the papers pertaining thereto had not been transmitted as you alleged. On subsequent examination, I found you were mistaken in this, for I traced them to your own table.

You also suggested, for the first time, that the case might have to go to a clerk for his examination and revision, adding, "perhaps he will be able to find something against it."

On a previous occasion you advised me to obtain a *mandamus*, which if I am correctly informed, cannot be sued out against a government officer in this city; still if it could be, what reason can be assigned why Illinois should be driven to the necessity of having the writ issued to force a decision she is otherwise justly entitled to.

These facts, transpiring at the time and under the circumstances they did, would seem to convey the belief that while the law is in favor of my state, she is to be deprived of its benefit by dilatory pleas. If such should be the result, and the clerk, who is not a lawyer, or charged with any responsibility, is to review the application or claim after it has been argued and submitted to you for decision, I must be frank enough with you to say such a procedure would be totally unwarranted. Illinois asks only that she shall be treated with respect and awarded her just due. She is no eleemosynary beggar at the national treasury, yet in her name and on her behalf, I solemnly and earnestly protest against a construction and policy, if they should be finally adopted, which I am yet unwilling to believe will be the case, relying as I do upon your great legal ability and high sense of justice, that would discriminate to her wrong and injury.

Yours, very respectfully,

I. N. MORRIS.

WASHINGTON, D. C, *March* 10, 1863.

HON. JOHN P. USHER,
Secretary of the Interior:

SIR—When I arrived in this city, more than a month ago, I did not anticipate the delay to which I should be subjected, and the exertions I would be compelled to make, to obtain for the State of Illinois the two per cent. fund arising from the proceeds of the sales of public lands made within the limits of the state since January 1st, 1819. The right of the state rests upon a few statutes that are so plain and emphatic in their provisions, and that have been so uniformly construed to have no ambiguous meaning by legal minds, that I confidently expected a ready assent to the proposition I presented. And especially was this the case when the president, after a careful examination of the laws bearing upon the subject, expressed the opinion to you, to Judge Norton, member of congress elect from Illinois, and to myself, that the state is entitled to the benefit I claim the laws confer upon her. I am disappointed, therefore, that these weeks of waiting, and repeated requests for official action, have brought me no formal decision of the appeal now pending before you. And I am the more surprised at this procrastination in view of the fact that you have never given to me or to others, so far as I can ascertain, any intimation that you entertain a doubt as to the equity or legality of the claim I represent. On the contrary, the remarks you have made at our various interviews, have given me the impression that you are satisfied that the demand made by the state is a just one, and others who have been with me at some of those interviews, and who at the time, suggested that if any doubt existed, it could be in a moment expressed, have shared with me that impression.

At first you stated that the amount involved is large, and that the payment of it might create some excitement. I answered that the amount in issue could not, properly, affect the decision of the case in any way, and that the real question is and was, what are you legally required to do, and not what may be the consequences of the discharge of your duty.

At another time you advised me to sue out a writ of *mandamus*, but it appeared to me, aside from insuperable legal objections, that a writ of *mandamus* could not, if granted, make more clear my right to ask from an appellate tribunal the decision of an appeal properly taken.

Subsequently, you interposed other obstacles, and among them the suggestion that the President might feel some delicacy in having a decision made in favor of his own State, and that you also felt some hesitation in making a decision that might determine the rights of the State of Indiana, the place of your residence. To such excuses there can be but one reply. The duty of executive officers in construing and executing laws cannot be affected in any way by extraneous circumstances, or by the individual peculiarities in the relations of the officers, and it would be strange, indeed, if a State could be deprived of the benefits of legislation, simply because it happened that one of the citizens of the State was the executive officer charged with the execution of the law. The character of the law affixes no responsibility to the officer, neither is there any discretion given to the Executive to suspend

the solemn enactments of the legislative department. When an appeal is taken from a subordinate officer to a higher one, if the one to whom an appeal is taken, arbitrarily refuse to consider the appeal, of what avail is the legislation providing for it? I do not charge that your delay had such intentional effect, but I do say that such is the practical result.

Learning that you intended to take your departure for Indiana, on Saturday evening, the 7th inst., I made two special efforts to obtain a decision before you left, but was unsuccessful. I even asked that, in the event that you were unwilling to decide, you would refer the case to your learned and able assistant, Judge Otto, or that you would make an agreed case and submit it to the Court of Claims. These requests you also declined. With deference, I ask if such treatment is just and respectful to a sovereign State? I make no complaint of the inconvenience I have personally suffered, although I came a distance of twelve or fifteen hundred miles to urge the rights of Illinois, under an appointment from her Governor, and remained here greatly to the injury of my health.

I have presented the foregoing considerations without any unkind feeling, and only because the interests of my State seemed to demand that I should not fail to express my dissatisfaction at your course.

There is one other matter to which I wish to call your particular attention. On Saturday last, the day you left for Indiana, I called at your office, and you informed me that "the claim of Illinois for the two per cent. fund had long ago been disposed of at the Treasury Department, on my application." I replied that it must be a mistake, as no application I had made had ever reached that department. You affirmed that it was so, and referred me, for a confirmation of the statement, to Judge Otto, the Assistant Secretary, saying that he had a paper or document to show it. I went immediately to Judge Otto's room and informed him what you said. He at once replied that you were mistaken, as I knew you must be. Upon further inquiry, I was informed that the paper or document you referred to was the opinion of the Comptroller of the Treasury, to the effect that *Missouri* was entitled to the two per cent. fund on the lands sold in that State—a paper exhumed from the Treasury Department by a land office clerk, and transferred to your department, to furnish an insurmountable obstacle in the way of the rights of Illinois. The subsequent examination I made on Monday, disclosed the fact that it was not in any sense an official paper; that it was no part of the Government archives, but was the private property of Colonel Wm. H. Jones, for many years chief clerk in the office of the First Comptroller, and now the acting Comptroller; a paper prepared by Colonel Jones for his private information and satisfaction, in view of the fact that a difference had arisen between himself and Governor Medill, (at that time the First Comptroller,) who constantly urged that if Missouri obtained the five per cent. the other States were legally equally entitled to it, as to the right of the State of Missouri; which question, that is the claim of Missouri, had been referred to the Attorney General for his opinion. Subsequently, the private views expressed by Colonel Jones in the said paper, were sustained and approved by the

Attorney General, as appears from a letter addressed to the Treasury Department by him, dated May 30th, 1860, and containing the following words: "I have examined the papers you sent me relative to the claim of Missouri for two per cent. on the sales of public lands, and am clear that she is entitled to what she claims."

If this "document" had been an official paper it could not be used injuriously to the State of Illinois. Her interests were in no way involved with those of Missouri, nor could a decision in regard to the rights of Missouri affect the rights of Illinois. However, as you deemed the paper of sufficient importance to have copied, I will refer to it briefly in connection with what I have to say relative to the appropriations for the Cumberland—commonly called the National Road. I do not regard the legislation concerning this road important to the determination of the legal question of the right of Illinois, but I refer to it as a matter of contemporaneous history.

The first appropriation made by Congress to the national road was one of $30,000, made by act of March 29, 1806, and long prior to the era of railways. It was the intention of the National Legislature to establish a better and more direct communication between the National capital and the Ohio river. Two per cent. of the money arising from the sales of public lands in the State of Ohio was reserved to reimburse the treasury. From 1806 to 1825 various appropriations were made to carry on the work. In the latter year Congress passed a law to extend the road to Zanesville, Ohio, and provided that the appropriations made for that object should be reserved out of the two per cent. fund of Ohio, Indiana, Illinois and *Missouri*. The same act provided that the President should appoint commissioners to complete the examination and survey of the road to the permanent seat of government in the State of Missouri, through the seats of government of the States of Indiana and Illinois. From that time until 1839, about which period the undertaking was abandoned, because Congress refused to make further appropriations, various appropriations were made in which the two per cent. fund of *Missouri*, as well as that of other States, was reserved to replace the amounts expended.

That part of the road passing through Maryland, Virginia, Pennsylvania and Ohio was completed and large amounts expended on it for repairs, and, if I am not misinformed, that portion of it lying within the eastern and western boundary of Indiana was entirely graded and graveled or McAdamized the greater part of the way. In Illinois some culverts and bridges were built and the track graded at different points between the western boundary of Indiana and Vandalia, the old seat of government, but it never passed through that place, nor was any part of it graveled or completed. Consequently, Illinois derived no benefit from it, as I admit Missouri did not, and on the score of justice they stand on equal ground. The General Government never kept the faith it pledged to Illinois when it reserved the two per cent. by constructing the road through that State, as there was an obligation to do, any more than it complied with its promise to Missouri. The amounts expended upon the road, in the aggregate, nearly equal the sum of $7,000,000. The expenditure in Ohio vastly exceeds the expenditure in Indiana, and

is about five times the amount of her two per cent. fund. The sum expended in Indiana vastly exceeds the amount spent in Illinois, and is very largely in excess of her two per cent. fund, being two and a half or three times as much, while the amount *wasted* in Illinois does not very greatly exceed the sum due from the sales of the public lands. I can see no reason for so unjust a discrimination against Illinois, and certainly the same reasons that led Colonel Jones to the conclusion that Missouri was entitled to the two per cent. fund, support with equal force the claim of the State of Illinois.

Again, Congress gave the National road, or those portions of it lying within the States of Maryland, Virginia, Pennsylvania, Ohio and Indiana, to those States respectively, and each of said States, by solemn acts of their respective Legislatures, accepted the donations, and established toll-gates. No such legislation was had in regard to Illinois, nor did her Legislature accept the work within her limits, thus showing conclusively that Congress regarded what had been done in that State as valueless, and the State herself has always so considered. Hence her "equity" survives, and her claim is a well founded and subsisting one, and could not have been invalidated even by a donation of the road from Congress. The road was surrendered to Ohio under an act approved March 2d, 1831. By acts of June 24th, 1834, and March 3d, 1835, it was surrendered to the States of Maryland, Virginia and Pennsylvania. I have been unable to lay my hand on the law surrendering to Indiana that portion of the road lying within her limits, and the act of her Legislature accepting it, but they are doubtless familiar to you.

Colonel Jones is mistaken when he says the United States "ceded all their interest in it, (the road,) whether finished or unfinished, to the respective States within which it was laid out." The legislation was confined to that part of the work which was available. To have gone beyond this would have been useless and foolish. Col. Jones is also mistaken when he says that the appropriations for the road, made after 1825, were all expended within the states of Ohio, Indiana and Illinois. Large sums were expended east of the Ohio river, and expenditures were made in that direction until the work was abandoned, or until within a short time of such abandonment. It is but just to add, that when considering the claim of Missouri apart from the claims of Ohio, Indiana and Illinois, Col. Jones' reasoning is sound and his views are just and discriminating.

It is proper for me now to show how these facts are related to the case I present. The sixth section of the enabling act for Illinois reserves two per cent. of the proceeds of the public lands to construct roads "leading to said State." Of course such roads were to be *free* public highways. Congress had no power to take the Illinois two per cent. fund to build private turnpikes in Indiana, Ohio, or any other state. How could it profit Illinois to have a road leading to her borders, upon which tax-gatherers sit a few miles apart, to collect tribute from her citizens? Such a road is a private one, and is the private property of the state or of individuals. Congress, by express legislation, has made the National Road the private property of the states through which it passes, and the states possess and control the respective parts as their own. Is

it then an answer to the claim of the State of Illinois, that she is barred by the benefits conferred upon others, in violation of a compact subsisting between the General Government and herself? Is the money of the State to be taken for the use of other states, or wasted within her own boundaries, without consulting her? I do not know what views others may hold, but it does not seem to me that such a policy has any foundation in law or equity. Illinois agreed with the United States, as a consideration for the five per cent. set apart in her enabling act, that she would not tax the public lands for or during the term of five years, from and after the day of sale; that the military lands of the State, while they remained in the hands of the patentees, or their heirs, should not be taxed for three years after the date of the patents respectively, and that lands of non-residents should not be taxed higher than the lands of residents. This agreement the State has faithfully kept, and now only asks the same observance of its faith and promise on the part of the National Government. If the road was "to be extended to the permanent seat of government of the state of Missouri," it was also to pass through the Capital and State of Illinois. Inasmuch as it did neither, and was only partially constructed, in the manner hereinbefore described, and the work actually done being valueless, for the reason that it was not completed according to agreement by the Government, Illinois has certainly as strong an "*equitable*" right to the two per cent. fund as that of any state that succeeded in obtaining it. I have heretofore shown that all but three states in which public lands lie have received it. Her *legal* right to it is equally clear. In my communication to you, of the 20th ult., I briefly indicated the points upon which I rely. I will now add something to the considerations then presented. In doing so, however, I shall not revert to what the Commissioner of the General Land Office has or has not done under the law, as it cannot in any way affect the issue now made. I will, nevertheless, express my dissent from the opinion expressed by the Commissioner in his letter to me under date of February 13, 1863, wherein he says, "the acts to which you refer relate to moneys received by the Government for lands which had been reserved for certain Indian tribes." Upon every principle of construction, technical or just, they are *cumulative*, and have a wider scope and a deeper significance than the Commissioner is willing to accord to them. The Hon. Thomas A. Hendricks, formerly Commissioner of the General Land Office, and now United States Senator from the state of Indiana, in a letter to me, held the following language, officially:

GENERAL LAND OFFICE, *January* 8, 1858.

HON. I. N MORRIS,
House of Representatives:

SIR—I have the honor to acknowledge the receipt of your letter of yesterday, in which you inquire whether the government will be prepared to pay over to the State of Illinois the two per cent. fund, to which she will be entitled in virtue of the act of April 18, 1818, for her admission into the Union, when the same shall have been ascertained, as required by the act of the 3d of March, 1857, and the said act of admission.

In reply, I have to state that the amount you refer to shall be adjusted as soon as the great pressure of business will admit of it, and I am not aware of any reason for withholding payment of the amount to which the State may be entitled when the same shall have been ascertained.

I am, sir, very respectfully, your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

One of your predecessors, the Hon. Jacob Thompson, in an opinion which is upon record in your department, construed the law of March 3, 1857, providing for the settlement of the five per cent. account of Mississippi and other states, as giving to that State and to Alabama the five per cent. on lands located within their limits with Indian scrip. In that opinion he says: "This same principle of adjustment," (meaning, as Col. Jones well remarks, what amount may be due Mississippi and other states for the two per cent. reserved) "the second section of the act under discussion, *extends to be applied to the settlement of the five per cent. account of the* OTHER STATES."

Again he says: "Thus as regards justice and right, Alabama and Mississippi are entitled to a liberal construction of the acts of Congress of March 3, 1855 and March 3, 1857, and as a matter of equity between these two states as claimants against the United States, and as between them and the other states of the Union, all are entitled to the same equal and liberal construction in carrying the act of 1857 into effect."

That Mr. Hendricks and Mr. Thompson were right in their views of the act of 1857, there can be no doubt. I have already verbally explained to you why the claim of Illinois was not paid under Mr. Buchanan's administration.

For further expression of my own views concerning the legal question involved, I respectfully again refer you to my letter to you bearing date February 20th. In view of the opinion I entertain of your legal ability and experience, I do not deem it necessary to discuss more fully the construction to be put upon the law.

I beg leave to call your attention to a letter filed with you, dated February 23, 1863, signed by all the members of the late Congress from Illinois, and by Gen. Farnsworth, Judge Norton and Col. Morrison, members elect of the 38th Congress, expressing the opinion that the State is legally and equitably entitled to the two per cent. under existing laws, and urging the payment of the amount.

The present Commissioner of the General Land Office while differing from me in the construction of the acts of 1855 and 1857, says, in a letter dated General Land Office, February 14, 1863, and addressed to the Hon. John F. Potter, Chairman of the House Committee on Public Lands: "There is no reason known why the State of Illinois should not stand upon the same footing as the State of Missouri, in regard to which latter Congress has given a precedent by the act of February 28, 1859." Adopting the view expressed by the commissioner, the Committee on Public Lands in the House unanimously instructed their chairman to report a joint resolution and recommend its passage, furnished by the Commissioner of the General Land Office, directing as a matter of justice and right, the payment to Illinois of the two per cent.

The chairman of the committee was firm in the belief that existing laws required the payment of the money, and the resolution could only be valuable, inasmuch as it might overcome the scruples of the commissioner and obtain a statement of the account. The committee, however, from the time the resolution was agreed on had no opportunity to report. Indeed, I myself, requested Mr. Potter to withhold it, as upon consultation with Mr. Washburne and others, it was thought unnecessary and unwise to duplicate existing legislation. It may not be out of place to remark that the mere fact that the representatives of one State obtained the passage of a joint resolution by Congress to compel a reluctant officer to do his duty cannot invalidate the rights of other states under existing laws.

In conclusion, I will say that I think I have shown clearly,

1. That the State of Illinois is *equitably* entitled to the payment of her claim.
2. That she is *legally* entitled to the payment of it.
3. That the President of the United States, the late Secretary of the Interior, Mr. Thompson, the late Commissioner of the General Land Office, Mr. Hendricks, the delegation from Illinois in Congress, and the House Committee on Public Lands, and all other persons to whom the question has been officially or unofficially presented, excepting only the present Commissioner of the General Land Office, consider the existing legislation sufficient to secure the rights of the State and the payment of the claim.
4. That the present Commissioner of the General Land Office unequivocally admits the equitable character of the State's claim.

Without adding anything to these considerations, I leave the interest of Illinois to you, in confident expectation of a just and equitable decision. All of which is respectfully submitted.

I. N. MORRIS.

My letter of March 10th, seemed to be demanded by the supposition that I should not be able to wait in Washington until the Interior Secretary's return from Indiana, and from the additional consideration that the paper prepared by Col. Jones was given an undue importance against the rights of the State, and made it necessary that I should discuss more in detail than I had done, or proposed to do, the question of the National Road.

Wearied with unnecessary delay at the Interior Department, I determined to take an appeal to the President. After calling several times without seeing him, and being afterwards too much indisposed to leave my room, I prepared and placed in the hands of Hon. P. B. Fouke the following paper, which he read to the President on the 23d of March, instead of the 20th, as that was the first interview he had with him after a persevering effort of ten days to obtain one:

MR. PRESIDENT — I sincerely regret the necessity of again troubling you with the business pertaining to Illinois, intrusted to me by Governor Yates. Nothing but an imperative sense of public duty could induce me to do it. At our interviews I cheerfully admit you have treated me and the subject with great frankness and justice; for you

not only heard my presentation of the case with patience, but at once decided that the State was entitled to the benefit which I insisted the laws confer upon her. If you had not so determined, the claim would not have been pressed. You have also, with the most commendable candor and fairness, given to others the same construction to the laws that you did to me. I am therefore surprised that after weeks of patient waiting, the Interior Department has not decided the appeal, involving the claim of the State now pending before it. To obtain a decision, I have resorted to every respectful and honorable means without success. First one pretext and then another has been interposed for delay, which it is not requisite I should detail to you. I am persuaded the delay has not arisen from want of time, for the Interior Secretary has found leisure to quit the post of his official labors here and go to Indiana to attend to private professional business there, leaving the case of Illinois, which it would have taken but a moment to determine, undisposed of. Hence there must be some other motive or reason for his course not now necessary to inquire into.

On Friday last, the 13th instant, Governor Yates, then being in Washington, telegraphed to the secretary that as he was absent, he would be obliged if he would allow his assistant secretary, Judge Otto, to decide the case. The secretary replied that Judge Otto might do so if his other duties would permit, but the Judge declined to act.

Despairing of obtaining a decision from the Interior Department, and no sufficient reason being assigned by the secretary for the procrastination, I appeal to you sir, to see that justice is done to Illinois I believe this is the only hope she has of having it awarded to her. I make the appeal with the full confidence and belief that you will direct that the laws shall be executed. Your impartial justice and high sense of public duty afford a sufficient guarranty of your action in the premises.

My health is bad, and if I leave here without the account being made up and reviewed by the First Comptroller of the Treasury, which I will have to do unless the matter is disposed of soon, the probability is the business will remain just where I left it. As it now stands, I shall only be able to report to the Governor, and through him to the Legislature and people of Illinois, that your secretary has crushed under his feet, and refuses to give practical effect to laws which you have decided require the payment of the State's demand. I know of nothing more I can do. If I have been importunate, it was because I thought the interests of my State required it, and I believed myself unnecessarily delayed.

On four occasions I have sought opportunities to personally present these views, but your other engagements prevented. I have, therefore, reduced them to writing and placed them in the hands of Hon. P. B. Fouke, to read to you, as he has an engagement to meet you to-morrow morning. Your answer to him will determine my future action. I do not permit myself, however, to doubt but it will be favorable, and that I shall have the agreeable duty to perform of saying to the people of Illinois they are indebted to your promptness and justice for the recognition and enforcement of their long delayed rights.

I. N. MORRIS.

Washington, March 19, 1863.

The President desired to know of Col. Fouke whether he appeared on behalf of the State. The Colonel replied that he did, at my instance, which makes it proper to state what occurred at the interview between them pertaining to the public business with which I was entrusted.

As he had frequently done before, the President said that the claim of the State was all right—that its payment was a mere question of time—that the pressure upon the Treasury at the present was so great that it could not be paid now very well, etc. He also said o Colonel Fouke that he had talked with Mr. Usher, his Secretary of the Interior, on the subject, and that his secretary *entertained precisely the same views of the laws upon which the claim of the State is based as he himself did—that he, the secretary, had so said to him.* It already distinctly appears in this report what is the President's view of the laws.

Judge Otto, the able assistant secretary, I presume, agrees with the president and secretary in their construction of the law, for the secretary said to me that the Judge "believed the case a very strong one in favor of the State." It appears, therefore, that the administration of Mr. Lincoln is fully committed in favor of the State's claim, and that what I have accomplished so far is:

1. A respectful consideration of the State's demand.
2. A recognition of its legality and equity.

But one other question remains undisposed of. The administration having admitted the legality and equity of the claim, will they pay it? This they cannot avoid doing, except in one of two ways:

1. By arbitrarily and willfully disregarding the provisions of a plain law which they have sworn to execute; or,
2. By pleading bankruptcy for the government in bar.

Will they do either? I have not yet seen anything to convince me they design to resort to such disreputable means. The payment of the claim is only postponed for a short time, as I understand the matter—the law not totally suspended. To attempt the latter would be a flagrant act of injustice and wrong, which any honorable government would scorn, and I have no belief that the administration intends that injury shall be done to the State. Mr. Lincoln did not, in my interviews with him, manifest any such disposition, nor have I any fear that he will. His Interior Secretary, I have thought and still think, resorted to unnecessary delay, but I do not believe he designs, in the end, to willfully do the State a wrong, though when I addressed my communication to the president it seemed as though he did. The amount of the claim, in view of which he has two or three times threatened to decide against the State, if forced to decide at the present, upon the exploded hypothesis of expenditures on the National Road, is, I am now convinced, all that prevents his prompt action. Such a consideration, however, cannot long prevail against a well established and subsisting demand, nor do I think the secretary seriously contemplates it should.

The following letter and my note relating thereto, will show the states which have received the five per cent.; and why should Illinois be turned away with her measure empty when others have been filled? Why should she be unjustly discriminated against? Instead of the president subjecting himself to censure by having the demand paid, he should delight, and I think will delight, in the opportunity he has of

rendering an act of justice to his State, which has so often and faithfully honored him. At all events, being a citizen of Illinois should not deter him from doing his duty by her, nor do I believe it will.

GENERAL LAND OFFICE, *February* 17, 1863.

HON. I. N. MORRIS:

SIR—In reply to your letter of the 14th instant, I have the honor to inform you that the following named states have received from the general government five per cent. of the net proceeds of the sales of public lands, viz: Louisiana, Arkansas, Michigan, Wisconsin, Kansas, Iowa and Minnesota.*

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

I have mentioned that the magnitude of the claim was the only cause delaying its payment. I do not know that I can state to your Excellency the precise amount of it, but I can very nearly give it. The law of 1857 fixes the value of all public lands at $1 25 per acre, as a basis for the computation of the five per cent. I obtained, when in Washington, a tabular statement, showing the various payments to the State of the three per cent. fund, the aggregate of which is $711,179 54. If the aggregate amount of the sales of the public lands should be equal to $1 25 per acre, which is probably just about the sum realized for them, then the two per cent. fund is precisely equal to two-thirds of $711,179 54, and is, consequently, $474,119 69. If the aggregate amount received for the lands should be more than equivalent to $1 25 per acre, in that event the two per cent. would be something less than I have stated it. The difference, however, cannot be large, if anything, and the claim of the State may be put down safely, in round numbers, at four hundred and seventy-four thousand dollars, upon which interest ought to be paid from the time I made the demand for the money in behalf of the State, December 12th, 1857.

When I reached Washington, on the 7th of February last, I found the claim resting just where I had left it when my Congressional term expired in 1861, no one having done anything about it, and I resumed the management of it at that point. I shall continue its prosecution until the money is paid, using therein my best endeavors and discretion. Sickness, and what appeared a sincere and earnest desire on the part of the administration for a short delay, were my only reasons for returning home when I did. If the account is not made up within a reasonable time, which I hope will be the case, I shall once more visit Washington, and should I then again fail in obtaining the voluntary payment of the demand from the Executive Department of the government, which is charged with the duty of seeing that the laws are "faithfully executed"—a thing I do not permit myself to anticipate—I shall adopt another course for the recovery of the money. But I ought not to contem-

* To the above list must be added Alabama, Mississippi, Missouri, California and Oregon, which states have received their full five per cent. and were omitted by the commissioner in his statement. I. N. MORRIS.

plate any adverse result. The possibility that the administration will compel the State to resort to compulsory means to obtain her admitted rights, is too remote to be seriously considered. For it cannot be that the President, who is so clear in his view of the law, will fail to see it executed. To refuse a compliance with its provisions would be a gross wrong, which it would be unjust to anticipate.

My action in the premises, I trust, meets your Excellency's approbation, and, I hope, will redound to the honor of your administration and the interest of the State.

I acknowledge with satisfaction, your energetic determination in the prosecution of the claim, and thank you for your confidence and valuable aid.

All of which is respectfully submitted.

I. N. MORRIS.

QUINCY, ILL., *April* 1863.

APPENDIX.

The following correspondence, and the favorable action of the committee on public lands, transpired through my agency; but, as I have stated elsewhere, it was not thought best, upon more mature reflection, to ask any further legislation from Congress, as that already existing was deemed amply sufficient to secure the payment of the State's demand.

In this connection, I cannot refrain from saying that our State owes to Mr. Potter, of Wisconsin, a debt of gratitude for his prompt, just and liberal action in her behalf, as chairman of the committee on public lands, in the House. I. N. MORRIS.

HOUSE OF REPRESENTATIVES,
Washington City, Feb. 13th, 1863.

HON. J. M. EDMUNDS,
Commissioner of General Public Land Office:

SIR—Will you favor me with a resolution which, in its terms, will authorize the payment of the two per cent. fund arising from the sales of public lands in Illinois, reserved in the act admitting her into the Union, for road purposes, and which, in similar instances, has been relinquished to or given to other new States.

I hope you will also favor me with your views upon the propriety and justice of allowing said two per cent. fund to said State.

Yours very respectfully,
JOHN F. POTTER,
Chairman Committee on Public Lands.

GENERAL LAND OFFICE, *Feb.* 14, 1863.

SIR—Pursuant to your request of yesterday, I have the honor to inclose herewith, a draft of a joint resolution in reference to the relinquishment of the two per cent. fund to the State of Illinois.

This resolve proposes to relinquish, upon the application of the *Governor*, instead of pursuant to an *act of the Legislature*—with that modification to avoid delay. There is no reason known why the State of Illinois should not stand upon the same footing in the matter, as the State

of Missouri, in regard to which latter, Congress has given precedent by the act of February 28th, 1859. Stat's, vol. 11, page 388, chap. 65.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

HON. JOHN F. POTTER,
Chair'n Com. on Public Lands, House of Reps.

Joint resolution in relation to the two per cent. fund due the State of Illinois, unanimously agreed upon by the House committee on public lands, and its passages recommended:

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the principles of the act of Congress approved February 28th, 1859, "giving the assent of Congress to a law of the Missouri Legislature, for the application of the reserved two per cent. land fund of said State," shall be applied to the State of Illinois, with this modification, that the relinquishment of the United States to the two per cent. fund contemplated in the third clause of the sixth section of the Illinois Enabling Act, approved April 18th, 1818, shall take effect from and after the date of the acceptance of said relinquishment by the *Governor* of said State of Illinois, and the accounting officer of the government shall thereupon adjust the claim of said State of Illinois in like manner, as directed by said act of February 28th, 1859, in regard to the State of Missouri.

The following is a copy of the bill referred to in the foregoing report, and which I introduced into the House of Representatives.

I. N. MORRIS.

A Bill authorizing the payment of the two per centum land fund to which the State of Illinois is entitled, for road purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the two per centum of the net proceeds of the sales of the public lands in the State of Illinois, reserved by existing laws to be expended in said State, under the directions of Congress, for road purposes, be and the same is hereby relinquished to said State, and that the proper accounting officers of the United States are hereby authorized and required to audit and pay the accounts in full for the same, as in the case of the three per centum land fund of said State, to the Governor thereof, or his authorized agent.

SUPPLEMENTAL REPORT

ON THE

TWO PER CENT. FUND,

SUBMITTED TO HIS EXCELLENCY,

RICHARD YATES,

GOVERNOR OF THE STATE OF ILLINOIS.

SIR—I beg leave to submit, most respectfully, a supplemental report in the matter of the two per cent. fund, due from the United States to the State of Illinois, for road purposes. In August last I again repaired to Washington, and engaged in the further active prosecution of the claim of the State to said fund. As in February last, I found it resting precisely where I had left it in 1861, so in August, I found it resting precisely where I had left it in February. Government functionaries do not seem inclined to disturb its repose unless they are urged forward to their duty with a pressing and ceaseless vigilance.

I am fully satisfied the Interior Department had determined not to decide the case pending before it, involving the State's demand, and that it never would have been decided in that department but for a peremptory order from the President to take it up and dispose of it. Even then, as soon as that order was given, in writing and verbally, to the Interior Secretary, he left his official post in Washington, and went to Indiana, as he had done once before, and thus avoided acting upon the question himself, leaving it to be disposed of by his inferior officer. I leave such neglect of official duty—such contempt for the order of the President, and the respect which is due to a sovereign State, to be judged of and estimated as your Excellency may determine. I will only state the facts, and leave others to draw conclusions.

A few days after my arrival in Washington, I was able to obtain an interview with the President, and made to him the following short address:

ADDRESS.

Mr. President: Each house of the General Assembly of Illinois, at their adjourned session in June, unanimously adopted a memorial addressed to you, expressive of their earnest desire that *you* should see carried into effect the laws requiring the payment to that State of the two per cent. land fund due to her from the General Government for road purposes. Each house, also, unanimously passed a resolution appointing me to lay before you, in person, their respective memorials, and I now perform that duty.

To attempt, on this occasion, a re-argument in support of the claim I represent would be nothing more than a useless multiplication of words, as we have heretofore gone over the premises together, and the conclusion has been reached. I cannot, however, refrain from observing that objections have heretofore been raised in the Interior Department to acting on the appeal pending before it, which, to say the least, are regarded by intelligent and legal minds as singularly strange to come from one of the executive officers of a great government. These objections have all been purely technical, and no one of them has any bearing against the legal or equitable character of the demand. It was said to me in that department that if some victories could be won they would feel more like paying the money. Those victories have been gloriously achieved by the Union arms, and have rejoiced the heart of every true American, so that that objection no longer applies. Indeed, I insist that no objection which has been made, properly attaches to the case. It is now pending on an appeal, which a certain law of Congress provides for taking from an inferior to a superior tribunal, and according to the legal rule must be determined upon the record sent up. Any point made outside of the record is extra-judicial and improper. But if the objections were just and referred to the merits of the cause, the State would have less reason to complain. As they are not, and only look to delay, I must, in the discharge of my public duty, protest against them. If I should fail to enter my dissent, my silence might be construed as acquiescing in their propriety.

The memorials, Mr. President, which I have presented, are addressed to you in your executive capacity. Illinois understands too well what is due to her own dignity and honor to request any special favor for herself at your hands. If she did not, your own character is too well understood for her to make such an unwise attempt. She stands upon the law and the justice of her cause. As her agent, with the view of getting the opinions of distinguished jurists upon the legality and equity of her claim, I addressed inquiries upon the subject to Judge Davis, of the Supreme Court of the United States, Judges Drummond and Treat, of the United States District Courts for Illinois, Judges Walker and Caton, of the Supreme Bench of that State, to the State officers and others, and now respectfully lay their replies before you, from which you will see their views correspond with your own heretofore expressed, and sustain the construction I have uniformly given to the laws upon which the

State's demand is based. Thus the judges I have named, the Executive of the State, the State officers, both houses of the General Assembly, and all the members of Congress from Illinois, unite in the opinion that existing legislation requires the payment of the sum I am authorized to demand from the General Government. In my interviews heretofore with you touching the matter I have in hand, you have not only treated me with great courtesy, but the State with entire fairness, and I was proud to acknowledge the fact in my report to Governor Yates.

I know full well I have not brought to the support of the claim, that ability which its importance and merit demand; but I hope I can say without arrogance, that, if I have fallen short in this, I have done nothing in the premises to dishonor my State, or prejudice her interest.

The result, Mr. President, is with you; for it is to you the State looks for the fulfillment of her too long delayed rights. Let me add, she does not expect to look in vain. I have now said, Mr. President, about all I deem it necessary to say, except to add, that the State ought not to be compelled, nor can I believe you will require it of her, to resort to compulsory means to obtain her acknowledged, well established and just due. She has furnished, under the volunteer system, in the present fierce and bloody war which traitors have so atrociously precipitated upon the country, an excess of over forty thousand men more than her just proportion, to uphold the Union and vindicate the National Flag and honor, and deserves well of the General Government. No other state has furnished so great an excess; still she asks nothing for her prompt and generous contributions to patriotism—nothing more than to be placed upon an equal footing with other states which have received the full five per cent. of the net proceeds arising from the sales of the public lands within their respective limits. To withhold from her this equality, would discriminate to her wrong and injury. You will not deny her justice from motives of delicacy because you are her honored citizen. If she obtains it she will be entirely indebted to you for it.

The following is a copy of the resolution and memorial adopted by both houses of the General Assembly, and duly authenticated transcripts of which I laid befor the President:

Resolved, That the following memorial be sanctioned and confirmed by this Senate, and that each member sign the same, and present it to the Hon. I. N. Morris, requesting him to present the same in person to the President of the United States:

Memorial of the General Assembly of the State of Illinois to the President of the United States, asking for the payment to the State of the two per cent. fund arising from the proceeds of the sales of public lands, and due to said State for road purposes.

Your memorialists, members of the Senate and House of Representatives of the State of Illinois, earnestly, but firmly and respectfully request your excellency to carry into effect the laws requiring the payment of the two per cent. fund arising from the proceeds of the sales of public lands in the State since January 1st, 1819, and to which the State is legally and equitably entitled for road purposes. The argument in favor of the right of the State has already been made by her agent, I. N. Morris, appointed by Governor Yates to establish and urge the

payment of the demand, so that your memorialists do not deem it requisite to repeat upon the subject what has already been said, especially as your excellency has admitted the justice and legality of the State's claim.

The simple question remaining undisposed of is, will your administration pay the amount which you admit is due? We submit that no consideration of locality or amount, no question arising out of the war, no embarrassment of the treasury occasioned by other demands, can justify your subordinates in disregarding the plain provisions of the statutes which confer upon the State the right to the money. If an officer of the government charged with the execution of a law which is mandatory to him, and for the passage of which he is in no wise responsible, can refuse to obey its commands, he virtually usurps the authority of the legislative department.

Your memorialists do not believe, nor do they charge that your administration willfully designs to do our State a wrong, yet the fact is not to be disguised, that, unless the sum claimed, and which you admit to be due, is paid, a great and irreparable injury will be inflicted on Illinois.

We are fully sensible that justice to her has long been delayed, and now with the utmost confidence appeal to you, not as her citizen, but as President of the United States, to perform a public duty, alike demanded by respect for the legislative department and justice to a sovereign and loyal State, with the fullest confidence and assurance that this appeal will be respectfully considered and the amount paid.

Illinois has stood nobly by the Union in its present struggle, freely expending her treasure and her blood in its defense, and at least deserves justice from the general government. We ask for her nothing more, and believe you will cheerfully grant her this much.

JUDGE TREAT'S LETTER.

SPRINGFIELD, ILLS., *May* 19, 1863.

DEAR SIR—I have received and read your report to Gov. Yates, relative to the claim of the State against the United States to the two per cent. fund, arising from the sale of the public lands.

From the examination I have been able to give the subject, it strikes me that your conclusions are right, and that the claim is just. The claim is undoubtedly a valid one against the general government, unless it has disbursed this fund in the mode prescribed in the act admitting Illinois into the Union. It seems clear to my mind, that the act of March 3d, 1857, is broad enough to require an adjustment of the claim, without any further legislation by Congress.

Very truly yours,

S. H. TREAT.

HON. I. N. MORRIS, *Quincy, Ill.*

JUDGE DAVIS' LETTER.

SPRINGFIELD, ILL., *June* 18, 1863.

HON. I. N. MORRIS, *Quincy, Ill.:*

MY DEAR SIR—I have examined your report to Governor Yates, and cordially indorse the views of Judge Treat.

The claim against the general government (from the examination I have given it,) is valid. If so, there can be no just reason why the State should not receive it.

Most truly yours,

DAVID DAVIS.

JUDGE DRUMMOND'S LETTER.

CHICAGO, ILL., *August* 5, 1863.

DEAR SIR—I have not been able to examine as thoroughly as I could wish the report you sent me and the various laws there referred to, but from the examination I *have* given them, the conviction naturally arises that the State has a just claim to the fund mentioned. As I understand, the law of 1857 was first introduced with particular reference to the State of Mississippi. Afterward the second section was added by way of amendment, and the title of the bill changed so as to make the law general. It certainly includes within its scope and meaning the State of Illinois, and it was intended to include it, because Illinois was in the same legal condition as Alabama and Mississippi in respect to the subject matter of the bill, and a discrimination against Illinois would have been unjust. Then the language of the law is imperative to the commissioner, "*shall* state on account, and *shall* allow and pay * * * such amount as shall thus be found due."

In the limited time that I have had to look into the question, I have considered some of the objections made to the claim, and certainly they do not appear to have much force, and one feels the more confirmed in the impression which, I think, must be made upon every mind on a cursory investigation of the subject.

Of course I do not wish to be understood as expressing a *deliberate* opinion, but only as saying that the arguments in support of the claim seem to have very great force, and no satisfactory answer has occurred to me with which to meet them.

I am, very respectfully, &c.,

THOMAS DRUMMOND.

HON. I. N. MORRIS, *Quincy, Ill.*

JUDGES WALKER AND CATON'S LETTERS.

RUSHVILLE, ILL., *June* 22, 1863.

HON. I. N. MORRIS:

SIR—After a careful examination of your report to his excellency, Governer Yates, in reference to the two per cent. fund arising on the sale of public lands, claimed to be due to the State, I fully concur in your reasoning and conclusion. I regard the claim as just, and have no doubt it should be paid without further legislation. The act of the 3d of March, 1857, it seems to me is ample in its provisions, not only authorizing, but requiring its payment.

I am, sir, with respect, yours, &c.,

P. H. WALKER.

I fully concur in the above opinion expressed by Mr. Justice Walker.

J. D. CATON, *Chief Justice.*

The letter signed by the state officers, to which was added the highly respectable and influential name of Hon. William Butler, late State Treasurer, was sealed up and directed to the President, so that I was not able to obtain a copy of it, though I saw it after it had been prepared in Springfield, and knew its contents. It was signed by Auditor Dubois, Secretary Hatch, Treasurer Starne, and Mr. Butler, and was an appeal to the President to execute the laws and pay to the State the money claimed to be due.

After submitting the memorials and accompanying documents to the President, I waited a reasonable time and then called upon him to learn his conclusion. Upon sending him my card, he indorsed thereon the following words, and returned it to me:

"I sent your case to the Secretary of the Interior yesterday, and have not yet heard of it.

A. LINCOLN.

August 24, 1863."

The foregoing led to the following brief correspondence.

To President Lincoln:

I hardly know how I am to understand your note. Must I infer from it that I am referred to the Interior department, or must I wait upon your excellency until you hear from the department? When may I expect a definite answer?

Very respectfully,

Aug. 25, 1863. I. N. MORRIS.

Executive Mansion, Washington, *Aug.* 26, 1863.

Hon. I. N. Morris:

Dear Sir—Your note, asking what you were to understand, was received yesterday. Monday morning, I sent the papers to the Secretary of the Interior, with the endorsement that my impression of the law was not changed, and that I desired him to take up the case and do his duty according to his view of the law. Yesterday I said the same thing to him verbally.

Now, my understanding is, that the law has not assigned me, specifically, any duty in the case, but has assigned it to the Secretary of the Interior. It may be my general duty to direct him to act—which I have performed. When he shall have acted, if his action is not satisfactory, there may, or may not, be an appeal to me. It is a point I have not examined, but if it then be shown that the law gives such appeal, I shall not hesitate to entertain it when presented.

Yours truly,

A. LINCOLN.

Washington, *August* 26, 1863.

To His Excellency, Abraham Lincoln,
President of the United States:

Dear Sir—Your letter of this date has just been placed in my hands by your private secretary. It is all I expected you now to say—full, complete and just in its spirit and sentiment. In behalf of Illinois I return you her grateful thanks for it.

With distinguished consideration and respect, I remain your obedient servant,

I. N. MORRIS.

Thus matters stood awaiting the decision of the appeal in the Interior Department. While the case was still pending there, I discovered that our State had a small amount of Indian reserved land within her limits, upon which no part of the five per cent. had been paid, and I commenced the prosecution of a claim for the per cent. on that also. The result of my labors in that regard will be found in detail in the conclusion of my report.

At last, after more than six months of constant urging, the Interior Department rendered its opinion in obedience to the mandate of the President, and here it is:

OPINION OF THE ASSISTANT SECRETARY OF THE INTERIOR IN THE MATTER OF THE CLAIM OF ILLINOIS.

DEPARTMENT OF THE INTERIOR, *August* 31, 1863.

SIR — I herewith return the papers accompanying your report upon the appeal prosecuted by the Hon. Isaac N. Morris, attorney for the State of Illinois, from your decision, disallowing the claim of that State to two per cent. of the net proceeds of the public lands therein situate, sold since January 1, 1819.

I approve and affirm your decision.

I transmit you several communications that have been filed in this department during the pending of the appeal, and a copy of a printed report made by Mr. Morris to the Governor of the State of Illinois.

The President of the United States has referred to this department a communication, addressed to him by Mr. Morris, inclosing the memorial of both branches of the General Assembly of Illinois, and sundry opinions in favor of her claim upon the case stated by Mr. Morris.

These opinions emanate from several distinguished jurists of that State, embracing some of the most honored judicial names in the Union.

The signal ability evinced by Mr. Morris in the prosecution of the claim, the large amount which it involves, the high respect due to the eminently loyal State which prefers it, and the imposing array of authority enlisted in its support, render it peculiarly proper that I should state fully the reasons which have led me to a conclusion adverse to its validity.

The asserted right of Illinois to the fund in question, is derived from certain acts of Congress, which, it is alleged, authorize the payment to her of the two per cent. reserved, to be disbursed under the direction of Congress, as provided in the 3d clause of the 6th section of the act of Congress of April 18, 1818, entitled "An act to enable the people of Illinois Territory to form a constitution and State government," etc. (Statutes at large, volume 3, page 428.) The clause is in the following words:

"Third. That five per cent. of the net proceeds of the lands lying within such State, and which shall be sold by Congress, from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the

purposes following, viz: two-fifths to be disbursed, under the direction of Congress, in making roads leading to the State, the residue to be appropriated by the Legislature of the State, for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university."

This proposition was, with others offered to the convention of the Territory of Illinois for their free acceptance or rejection, and, if accepted by the convention, was to be obligatory upon the United States and said State.

The proposition was accepted, and the State of Illinois was, by resolution, approved December 3, 1818, declared to be one of the United States of America, etc., etc. (Statutes at large, volume 3d, page 536.)

By an act approved December 12, 1820, (Statutes at large, volume 3d, page 610,) Congress provided for the payment, by the Secretary of the Treasury, to the authorized agent of the State of Illinois, three per cent. of the net proceeds of the lands of the United States lying within that State, which, since the first day of January, 1819, had been or should thereafter be sold by the United States, to be applied to the encouragement of learning in conformity with the preceding clause.

The provision of the act requiring an annual account of the application of the money to be transmitted to the Secretary of the Treasury, and directing the payment of the sums then due, to be withheld, in default of such return being made, was repealed by the act approved January 13, 1831. (Statutes at large, volume 4, page 430.)

The fidelity with which the general government has performed the stipulation in regard to the payment of the three per cent., has not been drawn in question. The State of Illinois has received on that account $711,179 54.

The phraseology of the clause is too clear to allow much room for construction. In terms as apt and imperative as those providing for the appropriation, by the State, of the three-fifths of the five per cent. of the net proceeds, Congress reserved the direction of the disbursement of the remaining two-fifths, in making roads leading to the State.

By an act approved May 15, 1820, Congress provided for the appointment, by the President, of the commissioners to lay out a road between Wheeling, in the State of Virginia, and a point on the left bank of the Mississippi river, to be chosen by the commissioners between St. Louis and the mouth of the Illinois river, and appropriated ten thousand dollars to defray the incidental expenses. By a proviso, annexed to the second section, it was declared that nothing in the act, or that should be done in pursuance thereof, should be deemed or construed to imply any obligation on the part of the United States to make or defray the expenses of making the road thereby authorized to be laid out, or any part thereof. (Statutes at large, volume 3, page 604.)

The preceding legislation of Congress, making appropriations for the construction of a road from Cumberland to Wheeling, expressly provided that they should be chargeable upon and reimbursable at the treasury, out of the fund reserved in the enabling act, under which Ohio was admitted into the Union.

By the act of March 3, 1825, (Statutes at large, volume 4, page 128,) the sum of $150,000 was appropriated for constructing a portion of this

road, "which said sum (it is therein stipulated) shall be replaced out of the fund reserved for laying out and making roads, under the direction of Congress, by the several acts passed for the admission of the states of Ohio, Indiana, Illinois and Missouri into the Union, on an equal footing with the original states."

Additional appropriations, amounting to one million, one hundred and thirty thousand dollars, (1,130,000,) chargeable upon the same fund, were made by subsequent acts of the following dates:

March 3, 1825, March 25, 1826; March 2, 1827; March 2, 1829; May 31, 1830; July 2, 1836; U. S. Statutes, volume 4, pages 128, 151, 215, 352, 427, volume 5, page 71.)

Other acts of Congress, bearing dates respectively, March 2, 1831; June, 24, 1834; March 3, 1835; March 3, 1837; May 25, 1838; (U. S. Statute, volume 4, pages 469, 680, 772, volume 5, pages 195, 228,) appropriate the further sum of one million, eight hundred and thirty-four thousand, nine hundred and fifteen dollars and eighty-five cents, ($1,834,915 85,) and make it chargeable to the two per cent. fund of Ohio, Indiana and Illinois, and specify the amount that shall be expended in each of those states.

The aggregate amount thereby appropriated for the road within the State of Illinois, appears to be $606,000, and it is a conceded fact that the total expenditure within the three states of Ohio, Indiana and Illinois, largely exceed the reserved two per cent. fund of those states and Missouri.

Mr. Morris remarks that the claim of Illinois "may be put down safely in round numbers at four hundred and seventy-four thousand dollars, ($474,000.) A larger sum has been appropriated for the construction of the National Road within her limits, and her fund is chargeable with her just proportion of the one million, two hundred and eighty thousand dollars, ($1,280,000,) appropriated by the acts first above referred to.

It thus appears that the general government has discharged its obligations in regard to the expenditure of the fund. No part of it remains in the treasury, nor has one dollar of it been diverted from the object for which it was reserved.

After the fund, specifically applicable to the construction of the National Road, had been exhausted, and no further appropriations were made for that purpose, Congress, on the ninth of May, 1856, (Statutes at large, volume 11, page 7,) provided that:

"So much of the Cumberland Road as lies within the State of Illinois, and all the interest of the United States, in the same, together with all the stone, timber and other materials belonging to the United States, and procured for the purpose of being used in the construction of the same, and all the rights and privileges of every kind belonging to the United States as connected with said road in said State, be and the same are hereby transferred and surrendered to the said State of Illinois."

No act is cited by Mr. Morris, whereby Congress has in express terms relinquished its control over the fund or authorized its payment to the State of Illinois. He states that the laws, upon which he bases the claim of the State, are as follows:

"An act to settle certain accounts between the United States and the State of Mississippi, and other states."

"*Be it enacted, etc., etc.*, That the Commissioner of the General Land Office, be and he is hereby required to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, on account of the public lands in said State, and upon the same principles of allowance and settlements prescribed in the "Act to settle certain accounts between the United States and the State of Alabama," approved the second of March, eighteen hundred and fifty-five; and that he is required to include in said account the said reservations under the various treaties with the Chickasaw and Chocktaw Indians within the limits of Mississippi, and allow and pay to the said State five per centum thereon, as in case of other sales, estimating the lands at the value of one dollar and twenty-five cents per acre.

"SEC. 2. *And be it further enacted*, That the said commissioner shall also state an account between the United States and each of the other states upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre."

APPROVED March 3, 1857.

"An act to settle certain accounts between the United States and the State of Alabama."

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled*, That the Commissioner of the General Land Office be, and he is hereby required to state an account between the United States and the State of Alabama for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, under the sixth section of the act of March second, eighteen hundred and nineteen, for the admission of Alabama into the Union; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Chocktaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State five per centum thereon, as in case of other sales."

APPROVED March 2, 1855.

The provision touching the two per cent. fund is the same in the enabling acts of Illinois, Alabama and Mississippi.

Mr. Morris contends that Alabama and Mississippi received the two per cent. fund by virtue of the above acts, and that the second section of the act of 1857, makes the provisions of the preceding section general, and consequently being applicable to the State of Illinois, justifies the claim in question.

The argument therefore is grounded upon an assumed fact, and I may concede that a casual examination of those acts, without regard to pre-existing legislation, and the peculiar circumstances which led to their passage would apparently sanction Mr. Morris' conclusion. The assumption of the fact is, however, gratuitous and untenable.

Congress relinquished the two per cent. to the states of Alabama and Mississippi by the 16th and 17th sections of the act, approved September 4, 1841. (Satutes at large, volume 5, page 453.)

The effective granting words of both sections are identical. Section 16 is as follows:

"*And be it further enacted*, That the two per cent. of the net proceeds of the lands sold, or that may hereafter be sold by the United States in the State of Mississippi, since the first of December, 1817, * * * reserved for the making of a road or roads leading to said State, be and the same is hereby relinquished to the State of Mississippi, payable in two equal installments," etc.

The two per cent. which has accrued from the proceeds of the lands sold in those states, was paid to them respectively in two installments, and the fund thereafter accruing has been paid quarterly in conformity to the requirements of that act. No additional legislation was therefore necessary to secure effectually to those states the five per cent. arising from the *sales* of lands within their limits. Their title to it since the act of 1841 has never been questioned.

After the payment of the three per cent., under act of May 3, 1822, (Statutes at large, volume 3, page 674,) and of the two per cent. under the act of 1841, those states made a claim upon the general government for the payment of five per cent. upon the estimated value of certain tracts of land lying within their respective limits, which, by virtue of treaties with the Chickasaws, Chocktaws and Creeks, had been appropriated as Indian reservations.

It is well known that at the time of the passage of the enabling acts of 1817 and 1819, several millions of acres within those states were in the occupancy of Indian tribes, and when the possessory rights of those tribes were extinguished by treaty, reservations, embracing large quantities of land, were set apart for the benefit of members of the tribe, and as their individual property.

It was insisted that the grant or confirmation of these reservations should in the account between the general government and those states be considered as a sale, but the then secretary, Mr. Stewart, rejected the claim by a decison bearing date February 17, 1852. It appeared that the acts authorized only payment to be made of five per cent. on the net proceeds of *sales*, and furthermore, there was no act of Congress determining the value of the lands reserved. Mr. Stewart held that the department has no power to state an account or make an allowance. Congress granted relief by the acts of 1855 and 1857.

By the act of 1855 the Commissioner of the General Land Office was directed to include in the account of Alabama, "the several reservations under the various treaties with the Chickasaw, Chocktaw and Creek Indians within the limits of Alabama, and allow and pay to the said State five per centum thereon, as in case of other sales."

Mississippi was largely interested and equally entitled to legislative relief, and the act of the 3d of March, 1857, granted to her the same benefits which Alabama had received by the act of 1855.

A material omission in the act of 1855 was also supplied and the commissioner was required to estimate the lands included in the reservation "at the value of one dollar and twenty-five cents per acre."

Now, in view of the inducements that led to the passage of these laws and the objects they were intended to accomplish, I submit that but one construction can be given them. They plainly require that in ascertaining the amount of five per cent. due to those states by virtue of existing laws, the reservation under treaties should be included in the account, and that the land covered by them should be estimated at $1 25 per acre.

The second section requires that the commissioner should state an account between the United States and each of the other states upon the same principle.

Upon what principle? The obvious answer is the principle that the land, *reserved* under Indian treaties, should be regarded as so much land *sold* by the United States, and should be estimated at $1 25 per acre.

I am unable to perceive that the claim, which Mr. Morris represents, has any foundation in the letter of these acts, or in their spirit, meaning or intention. Mr. Morris is of opinion that the decision of a former Secretary of the Interior favors his construction of the act of March 3, 1857.

The point involved in the appeal from your office and submitted to the determination of secretary Thompson was—whether lands located within the State of Mississippi, to satisfy certain Chocktaw scrip issued under the acts of Congress of August 23, 1842, and August 3, 1846, were within the beneficial provisions of the act of 1857.

He decided that such lands, in adjusting the accounts of that State, "are to be regarded as constituting a portion of the several reservations under the various treaties with the Chocktaw and Chickasaw Indians."

The same principle of adjustment, the second section of the act now under discussion extends, to be applied in the settlement of the five per cent. account of other states.

The meaning of this, taken in connection with the case there presented, evidently is, that the same relief should be extended to other states, as by the first section, had been extended to Mississippi. And what was that? That lands disposed of to satisfy treaty stipulations with certain Indian tribes, should be considered, in adjusting the account of the State within which the lands are situated, as if such lands had been sold by the United States at their minimum value.

It is truly said in argument by Mr. Morris, that the two per cent. has been paid to Missouri, and he expresses the opinion that the reasons which lead to the conclusion that Missouri was entitled to it, support with equal force the claim of the State of Illinois. There is this essential difference between the two cases. The payment to Missouri was made in obedience to the requirements of an act approved February 28, 1859. (Statutes at large, volume 11, page 388.)

That act is as follows:

"*Be it enacted, etc., etc.*, That the assent of Congress be, and the same is hereby given to the act of the Legislature of the State of Missouri, entitled "An act supplemental to an act to amend an act to secure the completion of certain railroads in this State, and for other purposes," approved on the nineteenth day of November, eighteen hundred and fifty-seven, appropriating the two per centum of the net proceeds of sale of public lands in said State, reserved by existing laws to be

expended under the direction of Congress, but hereby relinquished to that State; and that the proper accounting officers of the government are hereby authorized and required to audit and pay the accounts for the same, as in the case of the three per centum land fund of said State."

This act is subsequent in date to those relied upon by Illinois in the assertion of her claim, and which are equally applicable, according to the interpretation of them insisted upon, to Ohio, Indiana and Missouri.

The fact that the latter State found it necessary to recur to a special law implied that equivalent legislation is requisite in favor of Illinois to sanction a like payment to her.

The statement is made that Alabama, Arkansas, California, Iowa, Kansas, Louisiana, Wisconsin, Mississippi, Missouri, Oregon, Michigan and Minnesota have received five per cent. and it is asked why should Illinois "be unjustly discriminated against."

I have already cited the acts of Congress authorizing and requiring the payment to Alabama, Mississippi and Missouri, and similar legislative provisions have been made for a like payment to the above named States, with the exception of California, which Mr. Morris has inadvertently included in the list.

For convenience, I subjoin a reference to the acts:

Arkansas, by act 23d June, 1836, vol. 5, page 58; to Iowa, by act 3d March, 1845, vol. 5, page 789; to Kansas, by act of May 4th, 1858, vol. 11, page 269; Louisiana to the act 20th Feb. 1811, vol. 2, page 641; to Michigan, 23d June, 1836, vol. 5, page 60; to Minnesota, by act 26th Feb., 1857, vol. 11, page 167; to Wisconsin, by act 3d March, 1847, vol. 9, page 178; Oregon, by act Feb. 14th, 1859, vol. page 384.

Some general views are presented by Mr. Morris in favor of the claim of Illinois. As they do not relate to the authority of the executive branch of the government to make the payment under existing legislation, I shall refrain from discussing them. They may, with great propriety, be submitted for consideration by Congress. That body will, undoubtedly, adopt such measure of relief as, in its opinion, justice and sound policy may require.

You will be pleased to furnish a copy of this opinion to Mr. Morris, and to His Excellency, the Governor of the State of Illinois.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO,
Acting Secretary.

Hon. J. M. EDMUNDS, *Com'r Gen. Land Office.*

As soon as I was apprised of the opinion given in the Interior Department, adverse to the State, I filed therein the following letter of appeal to the President:

WASHINGTON, *August 31st*, 1863.

HON. JOHN P. USHER,
Secretary of the Interior:

SIR—I learned to-day, unofficially, but I presume correctly, that the claim of Illinois to the two per cent. fund, due her for road purposes,

from the general government, and which has been pending on an appeal in your office, has been decided adversely to that State. I, therefore, pray an appeal from your decision to the President of the United States, and ask that all the papers properly pertaining to the cause, be transmitted to that officer, with the least possible delay.

Very respectfully,

I. N. MORRIS.

Agent of the State of Illinois.

A copy of the Secretary's opinion was not given to me for several days after I heard of its rendition, and was followed up by the subjoined extraordinary communication:

DEPARTMENT OF THE INTERIOR,

Washington, Sept. 5th, 1863.

SIR—I have the honor to acknowledge the receipt of your letter of the 31st ult., wherein you pray an appeal to the President of the United States, from the decision of this department, adverse to the claim of the State of Illinois to the two per cent. fund, alleged to be due her, for road purposes, from the general government.

You ask "that all the papers properly pertaining to the cause be transmitted to that officer with the least possible delay."

Not discovering, from the attention I have been able to bestow upon the subject, that an appeal lies in such a case from the decision of the department, I shall await the order of the President in the premises.

I am, sir, very respecfully, &c.,

W. T. OTTO,

Acting Secretary.

Hon. ISAAC N. MORRIS, *Washinyton, D. C.*

I had supposed that the expression of an opinion against the validity of the State's claim would terminate the opposition in the Interior Department, but the receipt of the foregoing letter removed the delusion. Reflecting upon my duty in the matter, I prepared the following reply which I did not transmit, as I thought it might prejudice the State's claim to five per cent. on Indian reservations. I, however, now embrace it in my report as an answer to the Secretary's communication, and hope it may not be considered rude or harsh. It was enough to arouse some feeling, to have a subordinate officer to attempt to thrust himself between the President and the State, and prevent him from taking any cognizance of her rights:

WASHINGTON, *September* 12, 1863.

Hon. W. T. OTTO,

Acting Secretary of the Interior:

SIR—On the afternoon of the 10th inst., I received, through the city post-office, your letter of the 5th, notifying me that you have been unable to discover that an appeal lies from your opinion to the President of the United States, in the matter of the claim of Illinois to the two per

cent. on the public lands sold in that State, and expressing a disinclination to send up the papers.

I was more surprised at this, as a copy of all the papers had already been furnished me, except a copy of the letter of appeal, which you acknowledge to be on file in your office. I do not, however, regard the refusal at all material, as in legal contemplation, the papers are before the President already. Being in and constituting a part of the archives of one of the executive departments, the mere formal act of placing them in the President's hands, is wholly unimportant.

I had supposed that the President was to determine for himself whether he had a right to review the case, and that you would not attempt to deny him this right, and make your will the governing rule of his action.

The power of the President to correct the mistakes and errors of his subordinates, and execute the laws, is undoubted. That power is an attribute of executive authority which no inferior executive officer can abridge or wrest from him. But I will not discuss this question with you, as its discussion more properly comes before the President. The fact that you 'await his orders' for the papers, would seem to concede the point, that you recognize his power to control the case.

Was it not enough for you to give an opinion adverse to my State, without throwing additional embarrassments in the way of her obtaining justice? Why should you manifest such a desire to defeat her claim? You have given your opinion—you have expended your power—you have struck your blow, and why try to do more? Why raise additional obstacles? What has Illinois done that she should be resisted on every inch of ground, and have every possible technical objection thrown in her face? Why should there, in fact, be a *new* case made up against her in your office, which, I insist, you had no right to make, instead of disposing of her claim upon the record sent up? She has only respectfully but earnestly pressed her demand. She has only asked to be placed on an equal footing with other States, and why all this opposition? I hope, sir, you are not afraid to trust your opinion to the searching scrutiny of the President's legal mind? I hope this is not the reason you decline to send up the papers.

Illinois, I admit, is placed in a position where she is compelled to sue to power for the purpose of obtaining rights which should be freely granted, but in doing this she stands upon the conscious rectitude of her cause and the dignity of her character. She asks nothing that is not right, and will resist the infliction of wrong. I have not presented her at the Interior Department as a beggar, and a refusal of that department to "send up the papers" to the President will not relax her efforts. She may even in the end, however, be overthrown, but it will only be when she has exhausted all her energies in pursuit of the right, and then she will have left a keen and abiding recollection of the wrong done her by the general government. Although turned away from the Interior Department she is not humbled or intimidated, and has hope still left that justice will be meted out to her.

I should have sent you this reply on the day I received your letter, but I thought it best to wait until the claim of my State for five per cent. on Indian reservations was disposed of in your department.

Assuring you I have no other feeling in this matter other than that which springs from a desire to faithfully serve my State, which has intrusted me with her confidence, and which, I think, has been harshly dealt by, I remain,

Yours, very respectfully,
I. N. MORRIS.

On the same day I prepared my response to the Secretary, I addressed the President a note, and am happy to say that His Excellency never gave me at any time an intimation that the act of the Secretary in "declining to send up the papers" would embarrass his action or make the slightest difference therein. He entertained and heard the appeal fully and respectfully, and promised a decision thereon, notwithstanding the papers were not "sent up."

WASHINGTON CITY, *Sept. 12th*, 1863.

His Excellency, Abraham Lincoln, President of the United States:

SIR—In your letter to me under date of the 26th ult., you say, in referring to the business of Illinois, then pending before the Secretary of the Interior, "When he shall have acted, if his action is not satisfactory, there may or may not, be an appeal to me. It is a point I have not considered; but if then it be shown that the law gives such an appeal, I shall not hesitate to entertain it when presented." I could not ask, as the agent of the State, any fairer proposition.

The action of the Interior Secretary not being satisfactory, I am now ready to make the showing you refer to. I have, also, some general views to present, which, I am sure you will not be averse to hearing, as you cannot but feel an interest in all that pertains to Illinois. I desire an audience in her behalf; and, if after I shall have presented the facts, you should think she has no rights, which you have power to enforce, so let it be. Your obliged and humble servant,

I. N. MORRIS.

PRESIDENT'S ANSWER.

EXECUTIVE MANSION,
Washington, Sept, 18, 1863.

Hon. I. N. Morris:

SIR—Please carefully put the argument in writing, with reference to authorities, in the matter intended to show that the law gives an appeal to me in the matter referred to. When that is ready to be presented, I will try to give you the personal interview about Illinois matters generally. Yours truly,
A. LINCOLN.

REPLY.

WASHINGTON, *Sept. 21st*, 1863.

To His Excellency, Abraham Lincoln, President of the United States:

SIR—Your note bearing date the 18th inst., was received. The argument you desire, with reference to authorities, is ready to be submitted,

and as you promised me, when it was ready, an interview in regard to Illinois matters generally, Mr. Johnson and myself propose to meet you on Wednesday next at twelve o'clock. Will that time suit your convenience? I wish to consult that.

Yours very truly,

I. N. MORRIS.

At twelve o'clock on Wednesday, the President received Mr. Johnson and myself, when I made before him the following argument, and Mr. Johnson submitted his opinion. Upon that argument and opinion the case is still held under advisement by His Excellency:

ARGUMENT OF MR. MORRIS IN SUPPORT OF THE STATE'S CLAIM, AND IN REVIEW OF THE OPINION RENDERED AGAINST ITS VALIDITY IN THE INTERIOR DEPARTMENT.

MR. PRESIDENT:—The case involving the right of Illinois to the two per cent., arising from the net proceeds of the sales of public lands made within her limits since 1819, has been decided adversely to the State by the Interior Department. The decision was not unexpected by me, nor will it be by the people of the State. I would have been, indeed, but a poor interpreter of surrounding circumstances, indications and events, to have expected anything else. I do not, however, despair of the ultimate result. The interests and considerations which intervene between my State and justice, and which it is not necessary for me to discuss now, (for there will be a more favorable time and occasion for that,) will not always prevail against her. She will finally obtain her rights. I have neither a fear nor a doubt of this; and believing it, I would be an unfaithful agent if I failed to prosecute them to the extent of every honorable means.

In the short address I made your Excellency in presenting the memorials of the State Legislature, I distinctly stated that "the result was with you, for it was to *you* the State looked for the fulfillment of her too long delayed rights," and added, "she does not expect to look in vain." I, also, said in that address, "you will not deny the State justice, from motives of delicacy, because you are her honored citizen—if she obtains it, she will be entirely indebted to you for it." You asked for a copy of that address, which I furnished, and accompanied it with a note, in which I stated that nothing short of a positive direction from you for the settlement of the account would effect anything. These words I had duly considered, and used them designedly, so there could be no misapprehension of my views. I knew very well before—and I knew then, as well as I do now, that the State had no hope, *except through your direct agency*, and the sequel has verified my conviction.

The Legislature of the State, also, knew very well what they were doing when they addressed their memorials directly to *you*, asking that *you* should see the laws carried into effect, providing for the payment of the money to the State, which I claim for her. The appeal was to *you*. I did not call at the Interior Department until after you had transmitted the papers there with your indorsement, for I knew it would be of no avail, and then only to urge that it would act in the premises. It required

no gift of prophesy to determine what an officer would do, who would arbitrarily hold on to an appeal for six months, when, if he had a doubt about the law conferring upon the State the benefits which I claimed for her, he could have expressed it in a single moment, and would have done it when repeatedly and urgently pressed as he was.

It shows, conclusively, that when he cannot defeat a case by excuses and delays—when he cannot weary out the patience of the suitor, and thus avoid direct responsibility—when prevarication will no longer avail, it will finally fall, when he is forced to act under the iron heel of power. This is almost invariably the result. Whenever there is a want of frankness there is danger. There are some things it does not take direct words to make us understand. It only required your Excellency long enough to carefully read over the laws to enable you to express your opinion.

A petitioner, whether for himself or for his State, has a very unequal contest, with an officer who will shut himself up in his room, and neither read written arguments, nor allow personal interviews, unless they are literally forced upon him, and then will scarcely answer in a few brief words, and most of those evasive. I had supposed that our government, in its republican simplicity, was accessible to all, or at least so designed, and that the humblest citizen, as well as a sovereign State, was to be respectfully heard when asking to be. Power, I know, can turn with disdain from the supplications of justice which it was formed to administer, but that justice will eventually triumph in the full consciousness of its own dignity.

I have not, nor shall I, present Illinois at the National Treasury as an eleemosynary beggar. I have not, nor shall I, place her in a position where she can be reproached with having done anything disreputable. Her honor shall be preserved if her wrongs remain unredressed and her rights unrecognized.

There is one other matter, Mr. President, which I might as well mention here. I am aware that you have an impression that it is not very gracious in Illinois to press her claim at this moment of our national troubles. You must, I am fully satisfied, be convinced the State has not acted from any design to embarrass your administration or the government. The claim has been pending before a department since 1857, has never at any time been withdrawn, and I have already explained why it was not paid under the administration of Mr. Buchanan. It is certainly as proper for your administration to adjust it, as to wait for any other one to do it. I know, and so do the people of Illinois, that the State having had a prominent candidate for the presidency for fifteen years, that it operated greatly to the detriment of her interest in common with other States, and now that she has the President, it would be hard, indeed, to turn her away for that reason. In all that pertains to the advancement and glory of our federal organization, she has as deep an interest as any member of the government, and would be the last to do anything to destroy or embarrass the common cause. Her faith she has proved by her works, which will remain an enduring monument to her patriotism and self-sacrificing devotion. It ought to be no reproach upon her that she asks from the United States the payment of a just demand. Her leading men believe that now is as propitious a

moment for its payment as any other. The amount would go into the general national indebtedness, and scarcely be felt. But it is not the money she particularly desires or cares for at present. Her *right* to it she wants established, and the claim placed in such a situation that it will be ultimately discharged. It is as little as the government can do to acknowledge the debt, if it is not in a condition to conveniently pay it. Is this asking too much? Is it even immodest?

I will only add on this branch of the subject, that the distinguished, watchful and patriotic Governor of my State, believed he would not be justified in longer delaying a demand for the sum due. Indeed, further delay might be construed as criminal negligance, and would have been. He had not, properly, any discretion in the matter, but a plain and imperative duty to perform, which he has discharged.

In again calling your excellency's attention to the claim of Illinois to the two per cent. of the net proceeds of the sales of public lands made within her limits, I do not wish as being construed as taking an appeal from the opinion which the honorable Interior Secretary has been pleased to express adverse to the State, although I filed a letter praying such appeal, to save the point. I cannot regard that opinion as having any binding authority, or as a decision of the case. The questions of law and fact involved were fully and candidly submitted to you, and after a careful examination you reached the conclusion that the law, in your opinion, is with the State. That conclusion having been expressed by you in a written communication to me under date of August 26th, of the present year, wherein you say, "I sent the papers to the Secretary of the Interior, with an indorsement that my impression of the law was not changed, and in another (the indorsement you refer to) in which you said you believed the law was with the State, I hold to be such an expression of your opinion as ought to have been respected and acted on in the Interior Department. I do not claim that in a legal sense you expressly passed upon or decided the case, but only that you gave an expression of your view of the law. At the time you did this I admit the case was not before you for determination. But if it could be assumed that you had passed upon it definitely and finally, the following arguments pertaining to a determination, would seem to be just and conclusive, and may, perhaps, apply with some force to the obligation of an inferior officer to carry out the will or judgment of his superior; especially when it is made the duty of that superior to "take care that the laws are faithfully executed," *imposing upon* HIM both the *legal* and *moral* obligation to do it.

All the executive power of the United States is vested by the Constitution, in the President. It is his duty to see that the laws are faithfully executed. His power of delegating his authority goes no further than to direct how, in general or in particular, *his* determinations shall be executed. He has no power to give to a subordinate executive officer authority to make a *different* decision, for that would be an evasion of his own oath of office, and defeat the guaranty of his own responsibility. Therefore, when the President has decided the law, and reached a conclusion in any matter of executive responsibility *in his own proper person*, nothing remains for any interior officer to do, but to carry that

decision into effect. That inferior cannot determine because there has already been a determination by the executive himself.

Every determination of the President requires some sort of action to carry it into effect. It must be authenticated in the departments according to the usual methods of public business. But all such methods and all such authentications are something more and something subsequent to the determination.

The determination, decision, judgment or will of the Executive on a subject matter properly before him, disposes of that matter, and nothing is left for any department, officer or agent to do but to carry into effect the decision and preserve its history. It is wholly immaterial what the question is which is so disposed of, so that it arose in the line of executive duty and was determined. When the determination is made, no other determination can be made by any subordinate will.

But should your Excellency consider the opinion rendered by the Interior Secretary a decision, I still desire to urge that it is entirely competent and proper for you to review the action of the Secretary, and to make his action conform to your opinion.

The Government is divided into three co-ordinate branches—legislative, executive and judicial—each independent of the other, and neither responsible to the other co-ordinate branches for the manner in which it discharges its constitutional functions. I repeat, the constitution provides that the executive department shall be vested in the President, whose most important duty is "to see that the laws are faithfully executed," and of course as HE understands them. Neither of the other departments can abridge or annul his power. He derives it directly from the national organic act, and the executive power is vested in him as an *entirety*. He cannot constitutionally divide or share it with another if he would. As a matter of *convenience* he may and does allow others to act for him, but their acts are, in legal contemplation, his own. What they do is impliedly done by him unless he reverses their action. This is the legal conclusion. They are his conveniences—not his equals—agents to execute *his* will—not his co-executives—his auxiliaries—not the original source of power. They are made and unmade by his breath, and it may truthfully be said that, officially, "in him they live, and move, and have their being." Hence there can be no question but that the superior can overrule the inferior authority, which constitutes but a branch of itself, created by law, only to assist the superior power in the details of business without destroying or abridging its attributes. All the refinements of false logic on common sense cannot change this truth.

Besides, the right of appeal has been sanctioned by usage, and is supported by the opinions of the law officers of the Government. I have hunted up the authorities upon this point, but will leave its particular discussion to the able and distinguished gentleman who appears with me in behalf of the State, and who is far more able to do it justice than I am, contenting myself with a general view of the subject, yet I hope a correct legal one.

When the language of the Legislature is so peremptory in directing a subordinate executive officer to do a certain act, as it is in the laws I have cited, certainly the constitution requires that the President, in

whom is located all the executive power, shall see that "the laws are faithfully executed," and it is not in the power of any departmental functionary to intervene, and thurst himself as a barrier between the obligation to perform the act, and the President's obligation to see that the act enjoined is performed.

The President delegates his power in the manner I have stated, merely that his convenience and that of the public may be thereby subsurved. To say that an officer, who is the creature of executive convenience, may refuse to obey a positive legislative enactment, and that the President has no power to control the refusal of such officer, is to relieve the President from his constitutional obligations, and to substitute for the executive authority the caprice of an irresponsible subordinate.

Certainly the framers of the constitution never intended to place such vast and important power in irresponsible hands—never intended to exalt the subalterns above the superior. You are responsible to the people for the manner in which you discharge your duty. They are only responsible to you, and their refusal or omission to execute a law imposes upon you the imperative duty of doing it. If this was not so, the whole executive power of the Government would be parcelled out among those without accountability, and would become a weak and wicked instrument in the hands of men whom the people could not reach, either for misfeasance or malfeasance in office. A direction to a subordinate to execute a law is a direction to the President. The law may speak directly to the inferior, but it is the duty of the Executive to see that he performs the act.

When Mr. Whittlesy was first Comptroller of the Treasury, under an appointment from President Taylor, he recognized the binding authority or direction of his superior officer when passing the Galphin claim for interest, by appending to his name or signiture of approval, the words: "The signing of this certificate is an administrative act," referring to the order or direction of the Secretary of the Treasury for him to sign it. He was himself opposed to it. If the Treasurer could control the Comptroller, the President can certainly control the head of an executive department, and more especially the Land Commissioner.

When Mr. Tyler was President, he directly ordered a claim for tobacco, destroyed in Maryland, in the war of 1812, which a subordinate officer had refused to allow; and many similar cases to the above ones exist in the executive records, but I leave them for the honorable gentleman, with whom I am associated, to use if he thinks proper to do so.

But, Mr. President, it does not make substantially any difference, in my judgment, whether, technically, an appeal lies to you or not. I have never had any great admiration for technicalities or quibbles, nor do I believe you have. The real questions to look at are: Has justice been done? Has the law been executed? or has it been disregarded or violated? You know, Mr. President, that justice has not been done, and that the law has not been executed, and that it should be. In this state of facts it is my belief you have no discretion, but a plain and imperative duty to perform, which is "to see that it is executed." No higher constitutional obligation rests upon you. The remedy is in your own hands, and can be easily applied. There are numerous instances

upon the record of the Executive Department, showing that when ministerial officers refused to execute the laws, Presidents found and adopted ready means to have them executed, and especially when that ministerial officer acted in direct violation of the known views of the President, and in total disregard of them. Presidents cannot afford to pursue the shadow; they must follow the substance. They cannot afford to "keep the word of promise to the ear, and break it to the hope;" and your own high character for integrity furnishes a safe guaranty you will not seek to evade but establish justice. The simple truth is, (and I must say it at the risk of its being regarded unprofessional,) they have undertaken to turn my State out of court upon false issues, and she does not intend to go out in that way. If she can be beaten fairly on the merits of her cause, that is all well, but she deserves better treatment than to be thrust aside on mere technicalities and assumptions, or crushed by mere power.

Having now, Mr. President, conclusively shown, as I think, by a brief statement of legal propositions and deductions, that you can hear and determine this appeal, if it is to be treated and considered in that light—that a failure to do so will make the opinion of a subordinate your opinion, when it is not in fact and reality yours, I might, with propriety rest my case. But if I should do so, I would not, perhaps, be treating you with entire fairness, or my State with justice.

The Interior Department, as I have already said, having given an opinion adverse to the State's claim, it may be my duty to briefly review it. From its great length and the evident labor bestowed on that opinion, it may be safely assumed, that nothing which could be done has been left undone, to invalidate the rights of Illinois. Not a trace of generous liberality has been applied in the construction of the laws, but the State has been held to the most rigid rule.

What appears strange, the Interior Department did not act upon the record sent to it from the General Land Office, but assumed independent, original jurisdiction of the case, which it certainly had no right to do, and determined to *de novo*. The Land Commissioner is directed by the law to state the account, and when he has made out and sent up his record, the interior department has no authority to assume that certain facts exist outside of it—to make up a new case; yet this has been done, and the issues changed, without giving me, as the agent of the State, the privilege of being heard. Of this I have just reason to complain. The law provides that an appeal may be taken in cases coming before the General Land Office, to the Secretary of the Interior. An appeal of what? Evidently of the case before the land office, *and as it existed there*, and that is the case the Interior Secretary is only legally authorized to act upon, and not upon one made up by himself, and he has not acted on such a case.

To suffer any other practice to grow up in governmental departments, would not only be legally wrong, but lead to interminable embarrassments and difficulties to the Government itself, and work incalculable injury to parties.

The Land Commissioner refused to make up the account of Illinois, under the act of March 3d, 1857, for the settlement of the five per cent. account of Mississippi and other states, upon the ground that the law

only applied to Indian reservations. The Interior Secretary decides against Illinois upon the additional ground that she has already, as he alleges, received the amount in the construction of the national road.

The foregoing facts constitute very strong reasons in favor of a direct interference on your part, Mr. President, to the end that justice may be done, and, of themselves, make this no ordinary case.

How could the Secretary assume—what right had he to assume, that the claim of Illinois had already been liquidated, when no account had been stated by the Land Commissioner? It is true, the law says "he shall state an account," but the Commissioner says he will not state it, and the Interior Secretary says he need not state it. The law is one way and their *dicta* another. The law does not say the account "*may* be stated," but that he is "REQUIRED" to state it. The law leaves to the Commissioner no *discretionary* power, but is *mandatory*, *direct* and *positive* in its terms, free from doubt or ambiguity. But the Land Commissioner assumes the right to exercise a discretion—to set up his will in lieu of the law—in short, refuses to execute it. Whether the law, or his will, supported by the Interior Secretary, is to prevail, remains to be determined. Illinois stands upon the law, and asks that you shall direct your ministerial officer to execute it.

The application made by me, as agent for the State, was to have the account stated under the law to show:

1st. What was the amount of the two per cent. fund.

2d. That the amount thus ascertained should be allowed and paid.

The Commissioner of the General Land Office refused to state such account on the ground that the law upon which I rely applies only to Indian reservations. From his decision I appealed, and the Interior Secretary sustains the decision of the Commissioner, and gives as his reason, that the amount I claim for the State has already been expended by indirect appropriations for other purposes! The language of the act is, as I have said, mandatory, and the statement of the account is the *first thing* directed to be done. And I affirm that this must be done before it is possible to raise any question as to the account of the State having been liquidated and balanced by expenditures for different objects.

I made application to the Land Commissioner to direct an account to be made up, showing what would be two-fifths of the five per cent. of the net proceeds, arising from the sale of the public lands, sold in the State of Illinois since January 1st, 1816, and based the application upon the act of 1857, which will be found embraced in my report to Governor Yates, and in the Honorable Secretary's opinion, and with which you are familiar. The control of this fund was reserved in the enabling act of the State by Congress, to be expended, under its own direction, "in making roads leading to the State." It was given to the State, but the General Government reserved to herself the right, as trustee, to direct its expenditure in the manner I have already stated, but will make still more evident before I conclude. The inquiry I made for the State, was, what is the amount of the fund thus reserved, and whether the General Government has it now in its possession, and by what authority she retains it—and if not now, by what authority it has been expended and how.

The State has a right to know, from the proper accounting officer, definitely, in dollars and cents, what the amount of the fund is, and she has also the right to know definitely, in dollars and cents, what sums have been charged against that fund, and for what purpose, if any, it has been used. The existence of the fund is acknowledged by the Honorable Secretary, but the inquiry of the State as to its amount, is now met by the vague negation that "no part of it now remains in the treasury, nor has one dollar of it been diverted from the object for which it was reserved."

It is certainly but proper that the State should have some transcript from the Treasury Department, or some statement from some officer, made by law, the medium through which the contents of the treasury are made known, rather than the assertion of a secretary, whose duties are quite other than those relating to the affairs of the treasury.

By proper inquiry I have ascertained that the books of the Treasury Department do not show any such fund as that referred to by the Honorable Secretary, or that it has been exhausted by the expenditures that he enumerates. The account has never been stated, and no man knows to-day what it is. I approximated it in my report to Governor Yates, on the basis of the three per cent. fund, and the Secretary appears to have acted on that approximation. I supposed he would require from the Treasury Department an authentic statement of the account before he arrived at a conclusion on the point, and the fact that he did not obtain it, is a convincing reason why the case should be reviewed.

In confirmation of what I have said, I beg leave to respectfully read the following statements, furnished me from the Treasury Department. It appears from the certificate of the Acting Register that no account has ever been kept in that department of the two per cent. fund of Illinois.

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE, *Sept.* 3, 1863.

HON. I. N. MORRIS, WASHINGTON CITY:

SIR—Your communication, of yesterday's date, has been received, and in reply thereto you are informed that no account has ever been kept or stated in this office for the two-fifths of five per cent. of the net proceeds of public lands lying within the State of Illinois.

Very respectfully,

R. W. TAYLER,

Comptroller.

TREASURY DEPARTMENT, REGISTER'S OFFICE, *Sept.* 3, 1863.

I hereby certify that the records of this office show that no account has been kept with the State of Illinois on account of the two per cent. fund.

R. SOLGER,

HON. I. N. MORRIS. *Acting Register.*

But, Mr. President, permit me to refer more particularly to the law of 1857, and the construction given to it. The Land Commissioner says "it relates to money received by the Government for lands which have been reserved for certain Indian tribes," and there he leaves it. The duty was left to the Honorable Secretary of supplying the argument,

and he has adopted the novel mode of arriving at a conclusion entirely from extraneous circumstances, and not by putting upon, or even attempting to give an interpretation to the words and context of the law itself. Reduced to the form of a sylogism, his argument is this: There is a law of 1841; that law provides for paying the two per cent. to Mississippi; therefore Congress has not passed any other law embracing the same object. Again, there were certain Indian reservations in Mississippi; Congress passed an act providing for paying to Mississippi five per cent. on those reservations; therefore Congress did not embrace any other object or purpose in the law of 1857.

The Honorable Secretary, in his opinion, says: "Mr. Morris contends that Alabama and Mississippi received the two per cent. fund by virtue of the above acts, and that the second section of the act of 1857 makes the provisions of the preceding section general, and consequently being applicable to the State of Illinois, justifies the claim in question.

"The argument, therefore, is grounded upon an assumed fact, and I may concede that a casual examination of those acts, without regard to pre-existing legislation, and the peculiar circumstances which led to their passage, would apparently sanction Mr. Morris' conclusion. The assumption of the fact is, however, gratuitous and untenable. Congress relinquished the two per cent. to the States of Alabama and Mississippi by the 16th and 17th sections of the act approved September 4th, 1841."

When the Honorable Secretary made the foregoing statement, my report to Gov. Yates was before him, and he was making frequent references to it. It, therefore, seems almost inexcusable that he should so materially misapprehend my position. What I say in that report is this:

"What, as he (the Land Commissioner) seems to suppose, two sections incorporated into the pre-emption act of 1841, relating to the two per cent. fund due Alabama and Mississippi, can have to do with the construction of the act of 1855 and 1857, making no reference to the special legislation referred to, is more than I can discern. The Commissioner seems to forget that the laws of 1855 and 1857 were passed *long subsequent* to the special legislation of 1841, and that the act of 1857 is a general act, intended for the benefit of *all the states*, and requires the five per cent. to be paid to each state. Is each state to be deprived of its rights under that act because some sixteen years before, Congress passed a special law for Alabama and Mississippi? The Commissioner certainly cannot doubt but that Mississippi, if she had not previously received her five per cent., could receive all or any part of it under the act of 1857; and, if Mississippi, why not 'each of the other states?' The law so provides, and covers the original sum and all arrears due Mississippi and other states."

After misstating my premises; after asserting that my argument is founded upon an assumed fact; after asservating that the assumption of that fact was gratuitous and untenable, the Secretary gravely comes to the conclusion that the argument is ungrounded! I submit, from the showing I have made, that, having ascribed to me wrong premises, his conclusions are necessarily false. "The mote is in his own eye," and I

respectfully return upon him the compliment, that his "assumption of the fact is gratuitous and untenable."

The law of 1841 does, as the Honorable Secretary has stated, relinquish to Mississippi the two per cent. fund arising from the fifth section of her enabling act, to be paid in two equal installments, and quarterly after the payment of the last installment; but I am unable to perceive any good reason in this why Congress should not subsequently pass an act requiring *the whole five per cent. account to be stated "for the purpose," as the language of the law is, "of ascertaining what sum or sums of money are due to said State, (Mississippi,) heretofore unsettled, on account of the public lands in said State,"* under the provisions of the section of her enabling act I have just referred to, and require any balance to be paid.

The same is true of Alabama, for the law of 1857, passed for the relief of Mississippi, and other states, is founded on the Alabama act of 1855, with which your Excellency is familiar.

The Honorable Secretary, on the basis of the foregoing premises, arrives at the strange conclusion that the act of 1841 interposes, as an insuperable barrier, to the rights of Illinois under the law of 1857! I am not able to see the matter in that light, and it would certainly require a legal microscope of extraordinary power to discover the legitimacy of *his* conclusion.

Having planted the act of 1841 as an outpost, to guard his further progress, and as furnishing a proper interpretation of the law of 1857, the Honorable Secretary advances upon the Indian reservations in Alabama and Mississippi, the history of which, and the claims growing out of them, he details at some length, which features it is wholly immaterial I should examine, as they are extra-judicial matters injected into his opinion, and properly have nothing to do with the case. I suppose, however, his object in using the statement he has, pertaining thereto, is to show there was no necessity for the law of 1857, except to give to Mississippi five per cent. on Indian reservations, which alone, in his judgment, superinduced its passage.

In conclusion he says:

"Now in view of the inducements that led to the passage of these laws and the objects they were intended to accomplish, I submit that but one construction can be given them.

"They plainly require that in ascertaining the amount of five per cent. due to those states by virtue of existing laws, the reservations under treaties should be included in the account, and that the land covered by them should be estimated at $1,25 per acre.

"The section section requires that the Commissioner should state an account between the United States and each of the other states upon the same principle.

"Upon what principle? The obvious answer is the principle that the land *reserved* under Indian treaties should be regarded as so much land *sold* by the United States, and should be estimated at $1,25 per acre.

"I am unable to perceive that the claim which Mr. Morris represents, has any foundation in the letter of these acts, or in their spirit, meaning or intention."

Now, Mr. President, I propose to briefly analyze the law of 1855, passed for the benefit of Alabama, and the law of 1857, passed for the benefit of Mississippi and other states, and see whether their sole object was to give to the states five per cent. on Indian reservations, and whether they require nothing more, as the Honorable Secretary asserts, than to include in the five per cent. account authorized to be paid by previous acts of Congress, the five per cent. on the value of Indian reservations. For that object, why was it necessary to state a new account?

The Honorable Secretary says he is unable to perceive that the claim which I represent has any foundation in the "spirit, meaning or intention" of the acts of 1855 and 1857. If they have no such foundation I ask no benefit from them for Illinois—if they have, the Honorable Secretary's long experience in the law, and great acumen, ought to enable him to discover it, and grant to my State the rights she is entitled to under them. It will not avail to make a simple declaration, and leave it unsupported by argument. I desire nothing more than that the laws should be tested by all the legal rules of construction, their words, contents, subject matter, effect and consequence, spirit and reason, but at the same time, I protest against their being set aside by outside issues, and deductions drawn from those issues.

How can "other states" have their five per cent. account on public lands stated, if they had no Indian reservations, if, as the Honorable Secretary asserts, the five per cent. on those reservations was to attach to said accounts or be included in them? According to the assumption of the Honorable Secretary, there must exist another law, authorizing the payment of the five per cent. on the public lands sold within a state before an account can be stated and paid. Where there is no such law—and I admit no special act has been passed for the benefit of Illinois—there can be no statement, according to his logic, of the five per cent. account, so that the second section of the act of 1857, relating to "other states," is rendered entirely nugatory. In other words, the legislative power of the Government was guilty of the consummate folly, according to the Honorable Secretary's reasoning, of passing an act without an object, and without a meaning. I leave the Honorable Secretary to reconcile, as best he can with Congress, the difference between them.

Let the argument be stated in another form. According to the Honorable Secretary's logic, another law must exist, as a basis for the computation of the five per cent. It was so with Alabama and Mississippi, and he thinks it must necessarily be so with other states, and therefore, where there is no such law, there can be no such computation, according to his opinion. And yet the land commissioner, confining himself within the scope and meaning of the Honorable Secretary's opinion, decides that under the law of 1857 Illinois is entitled to the five per cent. on her Indian reservations, which amount to 41,754 59–100 acres in the aggregate, and that he will state that account with a view to its payment. I beg leave to read the correspondence which passed between us on the subject.

[Note.—This correspondence will be found in a subsequent part of the report, relating to the per cent. on Indian reservations.]

How can the commissioner state the account, when, by the very terms of the law, it is not to be regarded as a separate, distinct, substantive

account, but an account to be "*included*" in another account, to wit: the five per cent. land account. The absurdity into which the Honorable Secretary and the Honorable Land Commissioner have fallen, is so apparent that the proposition need only be stated to be understood. Why did the law of 1857 provide for or say anything about stating an account, under the fifth section of the enabling act of Mississippi, if that was not to be done? It could simply have provided for the payment to that state, and would have so provided if that had been its sole object of the five per cent. on Indian reservations. There is nothing in the fifth section of the enabling act of Mississippi which in anywise refers to Indian reservations, or which relates to five per cent. thereon, but it relates exclusively to the five per cent. on public lands within the state, upon which five per cent. was to be computed, and then the five per cent. on Indian reservations was to be added, or "included"—that is the word the law uses.

What is true of Mississippi is equally true of Illinois, one of the "other states." The five per cent. on the public lands valued at $1,25 per acre, was first to be stated, in the form of an account, and then the five per cent. on Indian reservations was to be "included," that is, put in the account, and the whole amount "allowed and paid." This conclusion is as inevitable as that two and two make four. No reasoning or sophistry can overthrow it, and it is but trifling with legitimate deductions to attempt it. So clear is it that we might as well cavil with the decree of the Almighty, when He spoke the sublime words, "Let there be light, and there was light."

But the Honorable Secretary says, after reaching the conclusion on the basis of his method of reasoning, and this is all he says about it:

"The second section" (referring to the law of 1857,) "requires that the commissioner should state an account between the United States and each of the other states, upon the same principle."

"Upon what principle? The obvious answer is, the principle that the land, *reserved* under Indian treaties, should be regarded as so much land *sold* by the United States, and should be estimated at $1,25 per acre." This is all true enough. It is all true that Indian reservations were to be treated as land sold, and this is the sole conclusion the Honorable Secretary draws from the second section of the act. Is there anything in the simple fact that Indian reservations should be regarded and treated as lands "*sold*," to exclude the deduction that an account should be stated on the net proceeds of the public lands? Certainly no such deduction can properly be drawn from the law itself, for the very groundwork of that law is that the account shall be stated on the lands sold, and then provides that Indian reservations shall be treated in the computation as such lands. The Honorable Secretary has sought for, without finding, a secure refuge under a conclusion, right enough in itself, but essentially wrong when tested by the entire provisions of the law. And yet, in language covering ten lines, upon such reasoning as I have stated, he seeks to set aside the important interest of my State. The fact alone that Indian reservations were to be treated as lands "sold," shows of itself that both were to be included in the account to be stated. I protest, in the name of my State, against his reasoning,

and his deductions. Both are unfounded, except upon violent presumptions and false conclusions.

The very title of the act of 1857, which is its best interpreter, sustains the construction I have given to the law. It is "An act to settle certain accounts," using the plural term, "between the United States and the state of Mississippi,"—not to settle *an account*, but "*certain accounts*,"—thus showing conclusively that the five per cent. land account, and the five per cent. account on Indian reservations, were both to be included. As with Mississippi, so with the "other states." Their accounts--not account—were both to be stated; that is, the five per cent. account on the public lands sold, and the five per cent. on Indian reservations, which, when ascertained, was to be included in the first or land account; and, when thus stated, the law declares they shall be "allowed and paid." Notwithstanding this is so plain, the land commissioner only proposes to state the account of the five per cent. on Indian reservations. I submit that his action is wrong, and in palpable disregard of the very letter of the law.

The account to be stated for Alabama and Mississippi was not an account alone of the two per cent. which the law of 1841 provided for paying, but the *whole five per cent. account on public lands*, including, of course, the three per cent. which they had received under and by virtue of their enabling acts, and any balance found due was to be allowed and paid, the law covering both the two and the three per cent. fund, so that the Honorable Secretary could have applied, with the same propriety and correctness, and traced to an equally original origin, the law of 1857, if he had applied it to and grounded it on the special anterior acts of 1817 and 1819, enabling the people of Alabama and Mississippi territories to form state governments, as he did in tracing it to and founding it on the law of 1841, providing for the payment of the two per cent. fund to those states; and to the three per cent., placed by the first acts directly under the control of the legislatures of those states, as he did to the two per cent. provided to be paid over under the last named act. He could also have found an interpretation equally intelligent and reasonable for the necessity of passing the act of 1841, in the enabling acts for Alabama and Mississippi, as he did in finding a necessity for the act of 1857, in the law of 1841. The act of 1857 relates to the laws of 1817 and 1819, precisely as it does to the law of 1841. Then why allow the latter, as he does, to furnish the only solution for the necessity of its passage? The reason may be found in something else, perhaps in an anxiety for a refuge, but certainly not in his interpretation of the reason why the law of 1857 was passed, to wit: to cover Indian reservations, as the act of 1841 covered the two per cent. Did not the laws of 1817 and 1819 cover the three per cent.? And why should not the necessity for its passage be found in the latter laws as well as the former ones? If all or any part of either fund remains unpaid to Illinois upon the account being stated, that is, upon ascertaining if any, and if so, how much, has been paid, the remainder shall be allowed and paid, deducting the payments from the sum total. In short, the law of 1857 provides for closing up the whole five per cent. accounts of the states, by declaring that the amounts found due should be paid to them upon being stated. This is just what it means—nothing more, and nothing less—and just what it

was intended to mean. No legal mind can make, legitimately or logically, anything else out of it. If it does not mean that it means nothing, and is a legislative abortion. Suppose Alabama and Mississippi had demanded, under the law of 1857, a statement of their whole five per cent. account, and they may have done it for aught I know, for it was not a material inquiry with me, and the payment of any balance due, would they not have had a right to make the demand, and would it not have been clearly the duty of the land commissioner to have complied with such demand? If Alabama and Mississippi had such a right, why not Illinois? Why refuse to deal out to her equal and exact justice? Why deny her an equal privilege under the law? Why this favoritism? Why turn one state away, when you would not and could not another? Their rights are equal under the law, and Illinois only asks to be placed where Alabama and Mississippi now stand. If it was not the intention of Congress to place the "other states" on an equal footing with Alabama and Mississippi, in respect to the five per cent., why did they say anything about it in that connection? and why did they so provide?

"An act to settle certain accounts between the United States and the state of Alabama," approved March 2d, 1855, requires "an account to be stated." What account? The account relating to Indian reservations? No. What account then? The law is specific in defining it. It says "that the Commissioner of the General Land Office shall state an account between the United States and the state of Alabama, for the purpose of ascertaining what sum or sums of money are due to said state, heretofore unsettled, under the sixth section of the act of March second, eighteen hundred and nineteen, for the admission of Alabama into the Union." What language could be plainer? The land commissioner is "required"—that is the word used in the law—to state an account. Between whom? "The United States and the state of Alabama." For what object? For the purpose of ascertaining what sum or sums of money are due to said state, heretofore unsettled. Under what? The sixth section of the act of 1819, allowing the people of the territory of Alabama to form a constitution and state government, preparatory to their admission into the Union. What is the provision of that section? I will read it:

"That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress, from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to said state, under the direction of Congress."

If the law stopped as far as I have quoted it, there would be found in it nothing about Indian reservations, but it goes on to say "and that he"—referring to the land commissioner—"be required to *include* in the said account the several reservations under the various treaties with the Chickasaw, Choctaw and Creek Indians, and allow and pay to the said state five per cent. thereon, as in the case of other sales," so that the Indian reservations are only *cumulative*, and not, as the Honorable Secre-

tary supposes, the original substantive object of the legislation. If any arrears were found due to Alabama, under the sixth section of the act admitting her into the Union, they were to be stated and paid by the act of 1857, whether they were parts of the two or three per cent. fund, so that it became necessary that the law should be wide enough and broad enough to cover the whole subject. But aside from this I submit whether there was any necessity for the law or not. Congress was the proper judge, and not the Honorable Secretary, who argues upon the assumption there was no necessity for it. That is not the question—not the proper subject of inquiry—the real question is, does the law exist? If your excellency will turn to the Honorable Secretary's opinion, you will find it there.

The "Act to settle certain accounts between the United States and the state of Mississippi, and other states," is based upon the Alabama act, and is similar in its provisions, except that it is made general in its terms, and fixes the value of all public lands, as well as Indian reservations, upon which the five per cent. is to be stated and paid, at $1,25 per acre, which the Alabama act omitted. Illinois is one of the "other states," included in the law, and I only ask in her behalf the benefit of its provisions—only ask that she shall be placed on an equal footing, where the law places her, with Alabama and Mississppi.

What does the second section mean when it fixes the value of "*all lands*" as well as "*permanent reservations*," using *both terms*, at $1,25 per acre, but that the computation of the five per cent. should be made upon both? What does the law mean when it says the amount thus found due "shall be allowed and paid?" It means precisely what it says or it means nothing. It is either a plain statute, which any one can understand, or it is a piece of useless legislative folly. Confine the construction to the strictest letter of the act, and allow no spirit of generous liberality towards a state—let the harshest, most rigid and parsimonious course be adopted by your ministerial officers, and still the law is with Illinois. Every effort to baffle, distort or overthrow it, leaves it the same plain, unmistakable statute. Its provisions may not be complied with, but they cannot be misunderstood; they may be disregarded, but they cannot be construed away. They are too plain to cavil over.

Some may, and probably will, derive the impression from the tenor of a portion of the Honorable Secretary's opinion, that Illinois was only entitled to three per cent. on her public lands, which she received, while Alabama and Mississippi were entitled to five. The fact is, each was equally entitled to the five per cent., the provisions in their enabling acts being similar, except that Illinois took three parts of her five per cent. for educational purposes, while the other states took theirs for purposes of improving the navigation of rivers, and constructing roads and canals. Each state had and held an absolute right in the fund set apart to them, but Congress reserved to itself the right, as trustee, to expend two parts of each, to construct a road or roads, leading to each state respectively. The money, when it accumulated in the treasury, did not belong to the General Government, but to the states. They had rendered a full equivalent therefor, by a stipulation between them and the United States, that they would not tax the public lands for five years after their entry, nor the lands of non-residents higher than those of

residents, and, in addition, Illinois exempted patented lands from taxation for a certain period. That what I have said in regard to the five per cent. belonging to the states may be more clearly understood, I will read the provisions relating thereto, applicable to Mississippi and Illinois. I have already read the one applying to Alabama.

The fifth section of an act to enable the people of the western part of the Mississippi territory to form a constitution and state government, etc., approved March 1st, 1817, is as follows:

"That five per cent. of the net proceeds of the lands lying within said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state, under the direction of Congress."

The act admitting Illinois into the Union, entitled "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such State into the Union on an equal footing with the original states," approved April 18, 1818, says in section sixth, condition third:

"That five per cent. of the net proceeds of the lands lying within such state, and which shall be sold by Congress, from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: two-fifths to be disbursed, under the direction of Congress, in making roads leading to the state, the residue to be appropriated by the legislature of the state, for the encouragement of learning, of which one sixth part shall be exclusively bestowed on a college or university."

The sum claimed by Illinois has already been appropriated to that State. The sixth section of her enabling act reserved it to her. Similar provisions in the enabling acts of other states, or in the acts providing for their admission into the Union, reserved a like sum to them respectively. There has been a uniform construction given by the General Government to the provisions reserving the five per cent. to the states, and no one has ever doubted that those of them in which public lands were located are legally entitled to it. In cases where it has not been paid over, it remains a reserved fund in the United States Treasury, as the property of the state, and the law of 1857, which attaches itself to the provisions setting aside and reserving it, declares "it shall be allowed and paid." What further legislation is necessary? Illinois has so much money in the National Treasury, and the law says to the proper accounting officer "state her account" under the sixth section of her enabling act, and when you have ascertained the amount of the five per cent. on her public lands and Indian reservations, if only three parts of it has been paid to her, pay the balance. Is it possible for any legislation to be plainer? The laws speak for themselves and plead my cause for me, not with dumb and silent mouths, but living voices. Congress has done its duty. If public officers refuse to do theirs, hold them to a proper accountability for it. Illinois cannot do more with them than to send up into their ears her voice, which she will do, in vindication of

her rights and honor, and expects to be heard and understood when she does speak. Her great interests have been sported with, and must she remain quiet? Must she neglect to speak for her rights, and speak plainly and openly? Candor is the soul of honesty and truth. Without it they are the priceless treasures of Heaven hidden under the garb of duplicity. Illinois always talks plain.

We have seen that the Hon. Secretary claims, in his opinion, that not a dollar of the two per cent. of Illinois has been diverted from the original object for which it was appropriated by Congress. Was it a legal and proper use of it to build a road with it, leading to the State, and then give that road to Indiana, his own State, as was done? Was it a legal and proper use of it to squander the amount on detached portions of work on the National road in my own State, and then abandon the enterprise, leaving all that had been accomplished in a useless and worthless condition? If such is the Hon. Secretary's legal conclusion, and it seems to be, I must differ from his construction of the 6th section of the act admitting Illinois into the Union, which sets apart and reserves to the State five per cent. on her public lands, and provides that two parts of it shall be expended under the direction of Congress in "making roads leading *to* the State," not in making a road and giving it to Indiana, not in making an attempt to build a road, and then abandoning it, but to "*make roads.*" Where is the road "made" for the benefit of Illinois? I will be greatly obliged to the Hon. Secretary if he will point it out, and so will my State. I again ask where is it? Where is her road? Has Indiana got it? Is there the trouble? The Hon. Secretary entirely overlooks or ignores the fact that after the road was constructed through Indiana to the border of Illinois it was donated by Congress to his own State, and this, in his view, is complying with the law!

But suppose we admit, for the sake of argument, all that the Hon. Secretary has said, still he seems to have forgotten the important facts that the law of 1857 was passed *long subsequnt* to all acts making appropriations for the National road, and that that law is the *last mind* of the Legislature, and is consequently to govern. The mistake he has made is that he has been traveling through old and gloomy sepulchres, looking for living forms where none exist. He speaks through the dead, and not the living. The law of 1857 is the monumental shaft which rises over the spot where lies entombed the acts reserving the two per cent. fund of Illinois for the purpose of constructing the National road, and upon which is inscribed the epitaph, "that road belongs to Maryland, Pennsylvania, Virginia, Ohio and Indiana—*Illinois has no beneficial part or lot in it.*"

In short the whole case is in a nut shell, if I am allowed to use a western phrase. Mississippi applied to Congress for an act, as Alabama had previously done, to have her five per cent. account stated under her enabling act, and proposed that her Indian reservations should be included in it. Congress did not see the justice or propriety of those states receiving the five per cent. without applying the same principle to other states, and hence amended the bill of Mr. Brown so as to have their five per cent accounts stated, allowed and paid upon the basis that "all lands and permanent reservations should be estimated at $1 25 per acre."

It is noticeable that the Hon. Secretary does not, in his lengthy opin-

ion, attempt to discuss the law, but to defeat its provisions, and debar my State of her rights under it, by thrusting before her matters which have as little to do with the law itself as they have with the moral code. It is also a singular fact, that of all the legal minds, (and some of them of the very highest order,) to whom the question has been officially or unofficially submitted, not one has been found outside of the Interior Department, that has not arrived at the conclusion that Illinois is entitled legally to the benefits I claim for her.

The history of the act is brief, and I might as well give it, as it will assist in the elucidation of the law. The thirty-fourth Congress organized on Monday, the 4th of March, 1856, after a long contest in the House of Representatives for the election of Speaker, which resulted in the choice of Mr. Banks. On that day, Mr. Brown, of Mississippi, introduced into the Senate a bill to settle certain accounts of Mississippi with the United States. (See Senate Journal, first session, 34th Congress, page 84.) The bill was referred to the committee on public lands, (the appropriate committee,) and on the 29th of April they reported it back with an amendment. (See Senate Journal of same Congress, page 290.) It passed the Senate on the following 5th of May. (See Senate Journal, page 304.) Mr. Stuart, of Michigan, was the member of the committee who reported it back, its passage having been unanimously recommended. Mr. Brown was the only Senator who discussed it, and he did so briefly. I will read all that was said and done at the time of its passage:

"Mr. Brown — The committee on public lands on Thursday last reported back the bill introduced by me (S. No. 4) to settle certain accounts between the United States and the State of Mississippi. The principle on which it is based has already been settled by the action of Congress. It applies to my State, and the amendment of the committee embraces like interests in other states. I ask the indulgence of the Senate to take up and pass it now, so that it may have a fair opportunity of getting through the House of Representatives at the present session of Congress. If it embraced any new principle I should not ask to have it taken up now."

The motion was agreed to, and the Senate proceeded, as a committee of the whole, to consider the bill which proposes to direct the Commissioner of the General Land Office to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to that State, heretofore unsettled, on account of public lands, and upon the same principles of allowance and settlement as are prescribed in the "Act to settle certain accounts between the United States and the State of Alabama," approved March 2, 1855. He is to include in the account the several reservations under the various treaties with the Chickasaw and Chocktaw Indians within the limits of Mississippi, and allow to the State five per centum thereon, as in case of other sales, estimating the lands at the value of $1 25 per acre.

The committee on public lands reported the following amendment:

And be it further enacted, That the said commissioner shall also state an account between the United States and each of the other states, upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at $1 25 per acre.

The amendment was agreed to; the bill was reported to the Senate as amended, and the amendment was concurred in. The bill was ordered to be engrossed for a third reading, was read the third time and passed.

On motion of Mr. Stuart, the title was amended so as to read, "A bill to settle certain accounts between the United States and the State of Mississippi and other states."

It will be perceived that Mr. Brown says the bill embraced no new principle. The payment of the five per cent. to the states had long been acquiesced in and was no new principle. Hence there can be no misapprehension of the legislative mind—and what was intended to be and was provided for. It was the payment of the five per cent.

It will also be noted that he definitely states that the bill provided for the settlement of *certain* accounts—not for the settlement of *an account* between the United States and the State of Mississippi, and that the amendment of the committee "*embraces like interests*"—not interests in other states. This explanation of the bill clearly shows the understanding the introducer of it had—the understanding the committee on public lands and the Senate had of it. Its terms were so just to Mississippi and "other states," and its provisions so unmistakable that no one doubted them, or attempted to give any other interpretation to the act. All understood it as relating to the five per cent. to be paid on public lands sold, and on Indian reservations.

The bill underwent the rigid scrutiny of the Senate committee on public lands, who would not consent to its passage until they had so amended it as to place the "other states" on an equal footing with Alabama and Mississippi in respect to the five per cent. After it reached the House it was referred to the judiciary committee, reported back by them, and its passage unanimously recommended. A brief explanation was made of the Indian reservation feature of it by Mr. Lake of Mississippi, the rules were suspended, and it passed that body on such suspension of the rules.

The Hon. Interior Secretary refers, in his opinion, to the payment of the five per cent. to Arkansas, Iowa, Kansas, Louisiana, Michigan, Minnesota, Wisconsin and Oregon, and leaves it to be inferred that *special* laws were passed by Congress, appropriating that fund to the respective states named. Such is not the fact. All had it set directly apart to them, and placed under the control of their respective legislatures by their enabling acts, or the acts providing for their admission into the Union. Louisiana was the first State thus dealt with. Subsequently Congress changed its policy and reserved two-fifths of the five per cent. to be expended under its own direction, and applied this restriction to Mississippi, Alabama, Illinois, Missouri, Indiana, etc., as it had before applied it to Ohio. In 1836, the restriction was not imposed on Arkansas or Michigan, when they came into the Union, nor has it been upon any new State since that period, thus showing the fact that the general government became more and more liberal in her dealings with the younger members of the confederacy, as was entirely proper.

A portion of the states receiving directly the whole five per cent. to be expended under the direction of their own legislatures, it led first to special legislation, to give its control to other states which had not received all of it, and finally culminated in the general law of 1857.

The Hon. Secretary says: "It is truly said in argument by Mr. Morris, that the two per cent. has been paid to Missouri, and he expresses the opinion that the reasons which led to the conclusion that Missouri was entitled to it, support with equal force the claim of the State of Illinois. There is this essential difference between the two cases: the payment to Missouri was made in obedience to the requirements of an act approved February 28, 1859."

I did make the statement attributed to me, when discussing the question of the National road, as a *matter of contemporaneous history*, showing that Illinois has derived no more benefit from it than Missouri—not in the sense in which the Hon. Secretary interprets it. But I also stated in my report, that because a State was driven to the necessity of procuring the passage of a special act, to obtain rights she was denied by reluctant officers, that did not deprive Illinois of her rights under the act of 1857. Will the Hon. Secretary say he thinks it does? Let us reduce the argument to the form of a syllogism. Missouri was entitled to two per cent. for road purposes on her public lands; Missouri got her two per cent. under a law passed in 1859, therefore Illinois has no right to her two per cent. under the act of 1857. It is by such arguments as these that my State is denied justice by the Interior Department.

There is one other point touching the act of 1857, which I will notice and then dismiss that branch of the subject. The Hon. Secretary says: "Mr. Morris is of opinion that the decision of a former Secretary of the Interior favors his construction of the act of March 3, 1857. The point involved in the appeal from your office, and submitted to the determination of Secretary Thompson, was, whether lands located within the State of Mississippi to satisfy certain Chocktaw scrip issued under the acts of Congress of August 23, 1842, and August 3, 1846, were within the beneficial provisions of the act of 1857.

He decided that such lands, in adjusting the accounts of that State, "are to be regarded as constituting a portion of the several reservations under the various treaties with the Chocktaw and Chickasaw Indians."

The same principle of adjustment, the second section of the act now under discussion, extends to be applied in the settlement of the five per cent. accounts of the "other states."

The Hon. Secretary's quotation from the opinion of his predecessor, or rather a partial synopsis of and abstract from it, evidently furnished by one of his clerks, proves altogether too much to sustain his position. After disposing of the case before him under the first section of the act, Mr. Thompson says: "This same principle of adjustment, the second section of the act now under consideration extends to be applied in the settlement of the five per cent. accounts of other states." Yes, "*the settlement of the five per cent. accounts of other states!*" But Mr. Thompson says more in his opinion which the Hon. Secretary does not think proper to quote. He adds immediately after the foregoing words "thus as regards justice and right, Alabama and Mississippi are entitled to a liberal construction of the acts of Congress of March 3, 1855, and March 3, 1857, and as a matter of equity between these two states as claimants against the United States and as between them and the other states of the Union, all are entitled to the same equal and liberal con-

struction in carrying the act of 1857 into effect." I submit then I was right in saying that Mr. Thompson's opinion sustains my construction of the law. Had the Hon. Secretary turned to the records of the General Land Office, he would have found another opinion there recorded, that of the Hon. Thomas A. Hendricks, of his own State, formerly commissioner of that office and now a United States Senator, a gentleman of the highest legal ability, which also sustains my construction.

The Hon. Secretary adopts the opinion of his predecessor, that lands located with Indian scrip are to be treated as lands sold, but there he stops, and does not give the same liberal and proper construction to the act of 1857, which Mr. Thompson said applied to the settlement of the five per cent. accounts—not account of the other states. The one is in favor of placing the "other states" on an equality with Alabama and Mississippi—by giving to them the five per cent. on their public lands, and on their Indian reservations the same as Alabama and Mississippi received, but the other says Illinois has no such claim to equality of rights. Alas for poor Illinois; true and loyal as she is, she finds the Interior Department slamming the door of public justice in her face. Although she has spoken through her press, her governor, her judges, her State officers, her Legislature and her Congressmen, their united voices are treated as only the distant murmurings of fraudulent demands, engendered in wrong motives and a clouded intellect. Must she rest under the implied imputation that she can neither present an honest claim or understand her rights? It is her privilege and duty to insist that because the act of 1857 includes Indian reservations, it does not necessarily, as the Honorable Secretary seems to suppose and assume, *exclude* every other object, purpose and thing. This will be the more apparent when we remember that Mr. Thompson, a former secretary, determined that the law of 1857 extended to be applied to the five per cent. accounts of the other states, whereas the acting secretary, who relies upon his opinion misquotes it, and makes him use the word "account," which he did not use—a word essentially different from accounts used in the law. To state "an account" is quite a different thing to stating "accounts" as the law requires.

Mr. President, the Honorable Secretary does not rest his case upon his construction of the act of 1857. He evidently distrusts that ground himself, or else why has he labored to show that Illinois has already received her two per cent. in expenditures on the National road, thus by inference, casting upon her the imputation that she is trying to palm off a fraud on the general government, which I repel as unfounded.

One of two things is certain. She is either entitled to the payment of her demand under the act of 1857, without regard to the expenditures referred to, or she is not entitled to receive it without further legislation. This I freely admit. Perhaps the same reason, (or it may have been some other one, and if so, it makes no difference) which led to the passage of the act of 1859, for the benefit of Missouri, may have led (indeed I am told it did) to the passage of the acts of 1855 and 1857, namely, that government officers refusing to do their duty under previous laws it is often more expeditious and pleasant to procure the passage of another law, to avoid their objections, than it is to contend with them.

It is often said that the United States is the most unjust government in the world towards her honest creditors—that her officers labor to evade, and not to execute a law appropriating money to discharge existing obligations. However this may be, the act of 1857 is so full and complete in its terms, that Illinois rests her claim upon it with the confident expectation of having it allowed and paid. It may safely be asserted that if the general government never quibbled, caviled or sported with the interest of a State, but always dealt frankly and fairly with her it would be far more likely to secure her enduring and affectionate confidence. It ought always to be liberal and magnanimous, but more especially equally just in its dealings with all the states.

The Honorable Secretary states that the case of Illinois differs from that of Alabama and Mississippi in that the 16th and 17th sections of the act of 1841 "relinquished" to those states the two per cent. fund. The act of 1857 did precisely for Illinois what the act of 1841 did for Alabama and Mississippi, namely: granted to her the right to possess and control the two per cent. fund, *but the whole interests of all the states was covered by the more comprehensive act of* 1857. It is insisted that that fund was retained in the treasury to replace appropriations out of it for the National road. How could this be until the account was stated, for until then there was no fund in the treasury out of which to replace it. The fact is, that at the very time of the appropriations referred to by the Honorable Secretary, no such fund, in any amount, existed anywhere, for but few of the public lands in Illinois had then been sold. When it did accumulate in the treasury, it remained a reserved fund until the act of 1857 vested it in the State, for up to that time, nor since, has there been an account stated by which to determine the sum due the state, or with which she was to be charged, if anything.

But granting that the fund that existed has been exhausted, let us examine the modes by which it is said to have been absorbed, and see whether Illinois has been fairly and equitably dealt by.

I will not again travel over the whole question of expenditures on account of the National road. That point I pretty fully discussed in a report to Governor Yates, submitted in April last, copies of which I sent to your Excellency. The opinion of the Honorable Secretary presents no new feature in the aspect of the question, nor has he ventured upon an assault, in direct terms, on Illinois' equitable rights, though his data, unexplained, will leave the impression she has not much equity. For instance, he states her two per cent. fund amounts to $474,000 00—that $606,000 00 was appropriated to be expended on the National road in that State—that the work done upon it in Illinois, Congress has relinquished to that State, and therefore he thinks the conclusion must follow that she has no just claim.

The unfairness of arriving at results in this way is very transparent. Let us look at the facts. Some of them have been stated by the Honorable Secretary, if not entirely accurately, at least enough so for all useful purposes. Some he has altogether omitted, which it is necessary to know, before there can be a full and proper understanding of the subject. He states that the act of May 15, 1820, provides that three commissioners shall be appointed by the President to lay out a road between Wheeling, in Virginia, and the Mississippi river, termina-

ting at a point between St. Louis and the mouth of the Illinois river—that it was declared in the act that nothing contained therein should be so construed as obligating the United States to make the road. This is all so, but what of it? It is quite clear that the Honorable Secretary leaves the inference to be drawn that the United States never placed itself under any obligation to construct the road through Illinois—that she was only bound to enter the State and expend the two per cent. fund. This, to say the least, Mr. President, is rather unfair towards your State and mine, for subsequently Congress, from time to time, gave additional assurance that the road was to pass through Illinois to the capital of Missouri, and made appropriations for that object. If she never gave such assurance she never fulfilled, even on the basis of the Honorable Secretary's reasoning, any part of her obligation. The general government kept its faith with Indiana and Ohio, as stated in my report, but it never kept its faith with Illinois and Missouri. A sum which the Honorable Secretary states to be $606,000, was wasted in Illinois, on detached parcels of work, but the road was never finished, indeed hardly commenced, nor did the State ever derive any benefit from it. The reservation of the two per cent. fund was based upon the ground that the road would be constructed. In the enabling act it was "reserved" to construct roads leading *to* the State. Illinois has never received the benefit of any road, constructed or to be constructed, as contemplated by law. There can be no pretence that she has. Hence Illinois has as strong an equitable claim to-day to that fund as she ever had. I think it would have been nothing more than right for the Honorable Secretary to have stated these facts and made this acknowledgment. I admitted in my report to Governor Yates that something more had been expended in Illinois on the National road than the two per cent., but insisted that as the State had got no road "leading to it," or within her limits, nothing but the valueless remains of an abortive effort to build one, the whole ground for retaining the money had failed. Was I not right?

There was expended upon the road in Ohio about two and a quarter million dollars, five times, at least the amount of her two per cent. fund, and in Indiana about one and a quarter million, nearly three times as much as her two per cent. fund, while the sum of $606,000 00, mentioned by the Honorale Secretary, only exceeds the two per cent. of Illinois in the comparatively pitiful amount of $132,000 00. Besides, Ohio and Indiana got those parts of the road within their limits, they being given to them by special acts of Congress, and for many years have had toll-gatherers upon them, and at the bridges, thus deriving a revenue from them, while Illinois obtained nothing of any value. In this state of fact it is *hardly just* to leave the *impression*, as the opinion of the Honorable Secretary will be understood, that Illinois stands upon the same ground in respect to the National road that Ohio and Indiana do. Let me repeat, is it just for a report to find its way into the newspapers from the Interior Department, to furnish evidence of its rigid justice, impartiality and watchful economy! that Illinois stands upon the same footing, in respect to the National road, with Ohio and Indiana? Is it just for Ohio or Indiana to now say to Illinois "you have no equity—no legal rights." "get ye behind me, I know ye not?"

The truth is, that the provisions reserving the two per cent. road fund of the states in the laws appropriating money for the National road—a road that was advocated and supported on the ground it was to be a military road, over which was to be transported men and munitions of war, and was to increase the value of the public lands—are mere bagatelles inserted in the acts to catch the votes of members who did not believe that Congress had the constitutional power to appropriate money out of the National Treasury for any such object. The fallacy of the whole thing is clearly apparent when we remember that nearly seven million of dollars was expended upon that road, and the entire sum was to be replaced out of the two per cent. fund of Ohio, Indiana, Illinois and Missouri, when that fund is less than two million!

There was expended upon the road in Ohio and Indiana alone about two and three-quarter million of dollars more than the entire amount of their two per cent. fund, and very nearly two million more than the entire aggregate of the two per cent. fund of Ohio, Indiana, Illinois and Missouri combined. The two per cent. of Illinois having thus been absorbed by the expenditures in Ohio and Indiana, those states are enjoying the benefit of it, Congress having, as I have already said, given them the portions of the road lying within their respective limits. This is truly a consoling reflection to Illinois! She ought to be grateful that her citizens are taxed by Indiana for traveling over a road which her own money has assisted to construct!

But the Honorable Secretary says Illinois, too, had the work done within her boundaries granted to her by Congress in 1856—a period twenty years after all labor upon it had ceased, and of course up to that period Congress claimed its ownership and control, as is evidenced by the very grant itself. It would have been more proper for him to have said that Congress, by a law of that date, voluntarily proposed to appoint Illinois administrator *de bonis non* upon a few wasted and crumbling embankments, ruined culverts and rotten bridges. The State respectfully declines the office.

In the matter of the two per cent. fund of Missouri, Mr. Tappan, from the Judiciary Committee of the House submitted on the 29th of May, 1858, a printed report. After giving the provision of the enabling act of that State, setting apart the five per cent., and which is similar to the one for Illinois, except that three parts of it were taken by Illinois for educational purposes while Missouri took her three parts for the purpose of improving her internal communications, says:

"That part of the fund which it is contemplated by this article shall be applied by the State to improving its internal communications has been duly paid over by the government of the United States. But the two per cent. received by the United States in trust, to be applied to communications leading to the State have not been so applied. The trust has not, therefore, been duly discharged, and the money which the article recognizes as the property of the State, and to be applied for its benefit, should be accounted for to the State by the government of the United States. The two per cent. fund in question belonged to the State, and the interest of the Federal government was but that of a trustee, and the sole reason for the arrangement was, that as the government of the United States had authority outside of the limits of the

State, which the State did not possess, it could apply that portion of the fund intended to facilitate communication to and from the State and promote its external commerce better than the State itself could do. If the terms of the article itself admitted of any question that this was the nature of the interest of the State in this fund, the original of this provision, which is found in the corresponding article of the 7th section of the act of 30th of April, 1802, 2d Statutes, page 175, entitled "An act to enable the people of the eastern division of the territory north west of the river Ohio, to form a constitution and State government," etc., in which it is expressly admitted that the five per cent. was given to the State as the consideration for the exemption of the lands of the United States within its limits from taxation, would be conclusive on the point. This was certainly a small consideration for the release by the State of a right to tax forty million acres of government lands within its limits, and there is, therefore, the more reason why it should be certainly and fully paid according to the agreement between the parties, or accounted for to the State, if the purpose to which it was to be devoted under the agreement between the parties has been abandoned. That purpose was the construction of a road (the Cumberland road was intended) to the boundary of Missouri, a purpose which has long since been abandoned, and the government should therefore deal with Missouri as it has dealt with Mississippi and Alabama under similar circumstances—direct the two per cent. fund, which was reserved for the purpose thus abandoned, to be paid to the State."

The same reasoning which was applied to Missouri applies with equal force to Illinois. She obtained no road *to* her border such as was contemplated in the sixth section of the act providing for her admission into the Union! That road was to be a FREE public highway or otherwise it was a mockery for the general government to reserve two per cent. of her money to build it. Congress continued to hold and control the Cumberland or National road as government property until, by its special grants, the respective parts of it lying within the limits of Maryland, Pennsylvania, Virginia, Ohio and Indiana were given to those states; since which they have possessed, enjoyed and controlled them as their own *private property. A private turnpike in Indiana, upon which citizens of Illinois are compelled to pay toll, is certainly not such a road as the State was entitled to—not a free road leading* to *her border.* But as I have heretofore discussed this point, and my arguments not only remain unanswered, but no attempt having been made to answer them, I deem it unnecessary to elucidate it further.

Nor, Mr. President, will I discuss the whole question of the National road further. I have never discussed it except as a matter of contemporaneous history, bearing upon the equitable character of the claim of Illinois. The three per cent. fund granted to the State, in her enabling act, for educational purposes, which has also been discussed by the Honorable Secretary, was in no way involved in the claim I made in behalf of my State for the two per cent., nor have I said anything about or had anything to do with it.

The following conclusions from the premises which I have laid down are inevitable:

First. That your Excellency is authorized to review the decision of your subordinate.

Second. That the character of the refusal of the Commissioner of the General Land Office is such as to make it positively obligatory on your Excellency to see that the law, requiring an account to be stated, of the five per cent. on the public lands and Indian reservations, and the balance due thereon paid, that is the two per cent., is executed.

Third. That the Honorable Secretary has not properly stated his case.

I freely admit the superior ability of the Honorable Secretary, but it is not in his power or that of any other man to overthrow truth, which "is mighty even to the pulling down of strongholds."

It is claimed by some that the opinion of the Honorable Secretary is the ablest ever rendered in the Interior Department. However, this may be, the real and only question before him, he dismissed in ten lines, by simply arriving at the conclusion that Indian reservations were to be treated as lands sold and the per cent. on them included in the accounts of Alabama and Mississippi stated under the law of 1841, and therefore Illinois had no rights under the act of 1857! How strange that this intellectual result should be regarded as conclusive against the claim of my State! All the balance of the opinion is properly extraneous matter.

I have not, I am aware, carried out my premises and arguments to all their logical deductions, for it was wholly unnecessary to do it. All I have aimed at was to place the validity of the claim of my State beyond doubt, and I hope I have accomplished that much. Almost an inexhaustible fountain of reasons, justifying and requiring its payment, I have not explored. Illinois cannot be expected to sit down quietly under an act of injustice. Trouble between the general government and the State, growing out of a refusal of the former to liquidate the amount, which may and I think will spring up between them unless it is settled, ought, by all means, to be avoided. The State has given sufficient evidence of her *earnest* in the prosecution of her demand, and will exhaust every proper means before she yields her rights. But why put her to additional trouble and expense to get them? I am sure your Excellency will not do so. The claim might as well be settled now as at a future day.

Mr. President, I am now through. This is the last application I can make to the Executive Department to execute the laws, for I have reached the original source of power. It is hard, indeed, that a sovereign and loyal state should be forced to fight her way over every inch of ground, encounter every species of hostility and opposition, and meet every kind of embarrassment which talent, state jealousy and ingenuity can invent, when she is only asking for that which is justly her due, upon every consideration, legal and equitable, and which should be granted freely, willingly, without stint, grudging or quibble.

The result, Mr, President, is with *you*. I repeat what I have said before, "it is to *you* the State looks for the fulfillment of her too long delayed rights." It was to *you* the Legislature addressed their memorials. The law and the argument are certainly on the State's side. The power to disregard them, I admit, rests with your ministerial officer, unless you overrule him. Will you suffer the State to be repulsed? Will you turn her away to seek redress from other sources, and forever

shut the doors of Executive justice against her? Will you have no share in the reward of her gratitude? If *you* do not uphold and vindicate her rights, to whom can she look? Whatever may be your determination, I shall bow, as the agent of the State, respectfully to it. I know it is not in your heart to do Illinois an intentional wrong, and I believe you can and will, with firmness, do her justice—that you will take the responsibility of dealing fairly with her. Her people expect it, and will be greatly disappointed if you do not sustain your view of the law, which you admit to be with them, and which the Honorable Interior Secretary has admitted to be with them, and said his assistant thought the case a very strong one for the State. All their hopes are centered in *you*, and now is the propitious moment to give them their rights—if not now they may well ask *when?* The opportunity lost cannot be regained. Now is the time, or *never*. The claim of the State is founded in law and right. No stronger or more just one was ever presented against the National Treasury: Let it be allowed. Let the Executive will speak out and prevail over the will of the subordinate. *Fiat justitia ruat cœlum.*

Finally, in conclusion, Mr. President, I would do injustice to my own feelings if I failed to add that I thank you for the courtesy you have uniformly shown me throughout my protracted and troublesome labors in prosecuting the claim of my State—I thank you for your respectful attention to my remarks to-day—for the frankness and candor with which you have uniformly treated the interest of Illinois confided to my care, and especially for your decided order to the Interior Department to take up the case and act upon it. It seemed hermetically sealed up there until you opened its prison doors and let it out, thus enabling the State to gain one step in advance, however wrong the decision that was made. It certainly affords good cause for congratulation that the blockade has been removed.

OPINION OF HON. REVERDY JOHNSON.

The preliminary question on the appeal to the President, in the matter of the claim of the State of Illinois, on which he desires an argument, is whether such an appeal can be legally had? The following observations are, therefore, respectfully submitted on the point:

I. On principle.

By the constitution, the entire Executive power of the government is vested in the President, except in such cases as are otherwise specially provided for. The language of the second article is, "*The* Executive power *shall* be vested in a President," etc.

The term "the," as here used, clearly means that all such power, with the exceptions referred to, is in the President, and the term "shall" means that it is not to be vested in any other branch of the government. It necessarily excludes all other branches.

II. By the third section of the same article, the President is to "commission all the officers of the United States," and "take care that the laws be faithfully executed." The execution of the laws is thus expressly made an executive duty. The President, and no one else, is, in terms, made directly and ultimately responsible for that result—an un-

faithful execution of, or a total failure to execute, the laws by any executive officer holding his appointment under the President, is a wrong to be especially redressed by the President. In no other way, in such a case, can he see that the law violated is faithfully executed. If his subordinate is authorized to act, except in subjection to his authority, it will ever be in the power of the subordinate to render nugatory the constitutional obligation of the President to "take care that the laws be faithfully executed."

In the beginning of the Government it was a question whether the President's power of appointment, with the advice and consent of the Senate, of executive officers, carried with it, as an incident, the power of removal, without the like advice and consent? But because, among other reasons, the constitution made it imperative on the President to have the laws executed, and of course made him responsible if it was not done, and because he could only have them executed through the designated executive officers, it was held as early as 1789, by Congress, that he necessarily possessed the power of removal, (Kent's Com., 308–309,) and this construction has been maintained by every President, and, in more than one instance, recognized by the Supreme Court.

Having, then, the power to remove an executive officer, if such officer refuses, or from any cause neglects, to execute the laws, the President is to remove him and appoint another, since in no other way he can discharge his express duty "to take care that the laws be faithfully executed." It is impossible for him, personally, to execute the laws. Their execution, therefore, by him, or rather his obligation to see that they are executed, is to be through subordinate officers, created for the purpose by Congress, and who, when created, are subject to his superintendence and control, as the constitutional depository of the whole executive power of the Government. If, therefore, a subordinate executive officer fails to carry out a law, the President cannot shelter himself behind such officer from the responsibility imposed upon him, in terms, by the constitution, of seeing that the laws are faithfully executed. If a President were to take that ground, it would seem obvious that he could not maintain it. His subordinates are subject to his power of removal, and are, consequently, subject to his control. Their acts, in contemplation of law, are his acts—their misconduct, if unredressed by him, becomes his misconduct. This principle is alike true of the acts and misconduct of the subordinate officers of the several departments, as of the heads of the departments. Consequently, if a subordinate officer does not perform his duty under the law, it is as much the obligation as the province of the President, to direct him to perform it, and to remove him if he continues to refuse, as it is his duty in such a case, to direct or remove a head of a department. On principle, therefore, irrespective of other authority, it is submitted as clear, that in all cases when an executive officer will not or does not carry out a law, and the fact is made known to the President, it is not only his right but his duty to see that he does it.

III. But on authority, the point is thought to be equally free of doubt. At one period it was the opinion in the Attorney General's office that the accounting officers of the treasury, in the discharge of their duties, were not under the control of the Secretary. That view

was taken by Mr. Wirt, on the 20th October, 1823, (1 Opinions Attorney General, p. 624). The opposite view, by Mr. Berrien, on the 4th December, 1829, (2nd Vol., p. 302). Mr. Wirt's doctrine was held by Mr. Taney on the 5th April, 1832, (Ib. 508,) and Mr. Berrien's by Mr. Crittenden, on the 13th November, 1852, (5th Vol., 630,) and this last has ever since been considered by the office as the true doctrine. Mr. Cushing maintained it, with his usual research and ability, on the 31st August, 1855, (7th Vol., pp. 453–464,) and by a report to the President on the 8th March, 1854, (Senate Ex. Doc., 1st Session, 33d Congress, No. 55). That document is herewith submitted, and the President's attention is particularly called to the following extract from pages 12 and 13. After referring to the several opinions of his predecessors, relating to the question, he says: "On a question raised by the refusal of the Commissioner of Customs to take the direction of the Secretary of the Treasury, Mr. Crittenden elaborately reviewed the whole subject, and determined, by unanswerable argument, the right of the Secretary of the Treasury, in the given case, and, by analogy, that of other heads of departments, in correspondent cases, (Opinion, Nov. 13, 1852.")

"Meanwhile, if an opinion delivered many years ago, by Mr. Wirt, is now to be received as law, then, although an Auditor, as even he admits, is subject to the direction of the Secretary of War, or the Secretary of the Interior, or some other Secretary, as the case may be, yet such Auditor is wholly above the authority of the President, who, nevertheless, directs the Secretary. Had the idea presented itself as a mere question of the *order* of business, to the effect that the President should act upon the subordinate officers through the heads of departments, it might have answered as a matter of convenience, but not one of legal necessity. But the idea utterly excludes the authority of the President, and so, while recognizing the authority of the head of department, in effect makes the latter also superior to the President, which is in conflict with universally admitted principles. Such an assumed anomaly of relation, therefore, as this idea supposes, resting upon mere opinion, or exposition, must, of course, yield to better reflection, whenever it comes to be a practical question, demanding the reconsideration of an Attorney General."

"Upon the whole, then, heads of departments have a three-fold relation, namely:

"1st. To the President, whose political or confidential ministers they are, to execute his will, or rather to act in his name and by his constitutional authority, in cases in which the President possesses a constitutional or legal discretion."

"2nd. To the law; for the law has directed them to perform certain acts, and when the rights of individuals are dependent on those acts, then, in such cases, a head of department is an officer of the law, and answerable to the laws for his conduct, (Marbury *vs.* Madison, 1 Cranch, 49–61,) and,"

"3d. To Congress, in the conditions contemplated by the Constitution—"

IV. Finally, on the right of appeal.

Mr. Taney, in an opinion given to the Secretary of War, on the 10th of September, 1831, (2d Vol., p. 463,) expressly holds that in the case

of an erroneous decision by an accounting officer, although it is binding upon his own subordinate, the party wronged may carry the matter by appeal to the Secretary, and, if his decision is not satisfactory, that he may also carry it by appeal to the President. His language is, the party may "appeal to the Secretary;" and if his decision is not satisfactory, "he may carry his *appeal from the Secretary, &c., before the President.*" This opinion remains, it is believed, the established doctrine of the office, and will be seen to be maintained by Mr. Cushing, on conclusive grounds, in his report just referred to.

Upon the whole, then, upon the meaning of the constitution, considering the question as now for the first time presented, it is submitted as clear,

First, That the President not only may, but is bound to, interfere in every case when a subaltern executive officer does not fulfill his duty under a law; and,

Second, That upon the now recognized rule of the Attorney General's office, the President, in such a case, may be called upon to give the necessary redress by *an appeal* from the decision of a head of a department, where such decision confirms an erroneous one, or fails fully to correct it of one of his own subordinates.

REVERDY JOHNSON,
For the President.

Washington, Sept. 22, 1863.

INDIAN RESERVATIONS IN ILLINOIS, AND THE PER CENT. THEREON.

WASHINGTON CITY, D. C., *Aug.* 22, 1863.

Hon. JAMES M. EDMUNDS, *Commissioner of the General Land Office:*

SIR—Will you please answer the following questions:

First, Are there any Indian reservations in the State of Illinois upon which five per cent. has not been paid by the General Government, and if so, how many acres do they embrace in the aggregate?

Second, Will you state an account of said five per cent. on said reservations, upon application being made therefor in behalf of Illinois, under and by virtue of "An act to settle certain accounts between the United States and the state of Mississippi, and other states, approved March 3d, 1857."

Very respectfully,
I. N. MORRIS,
Agent for Illinois.

GENERAL LAND OFFICE, *Sept.* 7, 1863.

SIR—In answer to the inquiries in your letter of the 22d ult., this morning received, I have the honor to state:

First, That there are "Indian reservations in the State of Illinois, upon which five per cent. has not been paid," embracing in the aggregate, by *estimate*, seventy-seven sections.

Second, That we are prepared to state an account for the quantity covered by such reservations when application therefor is made.

The quantity first above mentioned is the result of a *hurried cursory* examination, so as to meet your call at once, and will be, of course, lia-

ble to such modification as a more thorough scrutiny of the records may indicate.

Very respectfully, your obedient servant,
J. M. EDMUNDS, *Commissioner.*

Hon. I. N. MORRIS, *Agent for Illinois, Present.*

WASHINGTON, D. C., *Sept.* 8, 1863.

Hon. J. M. EDMUNDS, *Com'r Gen. Land Office.*

SIR—In your letter to me, of yesterday's date, you express your entire readiness to state an account of the five per cent. on Indian reservations in Illinois, upon application being made to that effect. As the Agent of that State, I now respectfully make that application, not waiving, of course, my previous application for the two per cent. on the public lands.

Very respectfully,
I. N. MORRIS.

GENERAL LAND OFFICE, *Sept.* 14, 1863.

SIR—Herewith I inclose a copy of my letter of the 12th instant, to the Secretary of the Interior, inclosing schedule for revision, as a basis of the adjustment of the claim of the State of Illinois to per centage on Indian reserves within the limits of the State.

As the decision in chief was made by the appellate authority, I have deemed it proper that the same authority should enunciate the principle which shall control in the adjustment, and hence have found it necessary to ask the ruling of the department proper in the matter.

With great respect, your obedient servant,
J. M. EDMUNDS, *Commissioner.*

Hon. I. N. MORRIS, *Present.*

WASHINGTON CITY, *Sept.* 15*th*, 1863.

HON. J. P. USHER, *Secretary of the Interior:*

SIR—I have this moment received from the Commissioner of the General Land Office a communication, in which he informs me that, on the 12th inst., he referred to you for decision a point involved in my application, in behalf of the State of Illinois, for the payment of five per cent. on the Indian reservations within her limits. Without expressing an opinion on the propriety or impropriety, the legality or illegality of that reference, I have to ask how soon you will act on the matter? I cannot but hope it will be at once. Please inform me on the subject. It will take but a moment to dispose of the question, and as I am anxious to leave for home, I would be greatly gratified and duly thankful for prompt action.

Please let me hear from you to-day, in reply.

Yours, very respectfully,
I. N. MORRIS.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Sept. 15*th*, 1863.

SIR—In reply to your letter of this date, I have the honor to inform you that I had, before its receipt, referred to the Commissioner of Indi-

an affairs, the communication from the Commissioner of the General Land Office, to which you allude, with the papers accompanying the same.

That officer requested in his communication that the schedule of Indian reservations in the State of Illinois, therewith transmitted, should "be critically tested by the records of the Indian office, so that, if any of the reserves have been retroceded to the United States, the same may be excluded; or if any omission exists, it may be supplied, in order that this schedule may thus be perfected from, and verified by the records of the office of Indian affairs, and thereafter returned to this office as the basis of an account."

As soon as a report shall have been received from the Indian office, it will be forwarded to the land office, to enable the commissioner to proceed to the adjustment of the account in question; and should the department deem it advisable to comply with his request for instructions in regard to the principle applicable to such adjustment, they will then be communicated to him.

I am, sir, very respectfully, your obedient servant,

WILLIAM T. OTTO,
Assistant Secretary.

Hon. ISAAC N. MORRIS, *Washington, D. C.*

Several other communications passed between myself and the Interior Secretary, Commissioner of the Indian Bureau, General Land Office, &c., in reference to the time of acting on the claim of the State for the per cent. on Indian reservations, and the termination of that action, which I shall not embrace in this report, as they are not material. Under the opinion of the Acting Secretary, which follows, and was reviewed by me, I received for the State, $1,565 80-100, which amount I reported to your Excellency and to the State Treasurer:

DEPARTMENT OF THE INTERIOR,
Washington, Sept. 25, 1863.

SIR—This Department has received your letter of the 12th instant, inclosing two papers:

First—The application of the 8th instant, of the Hon. I. N. Morris, for an adjustment of the claim of the State of Illinois, under the act of Congress, approved 3d of March, 1857. (Stat., vol. 11, page 200,) for per centage on the Indian reservations lying in that State.

Second- A schedule of the Indian reserves, collected from the township plats of Illinois surveys, and from the Indian reservation records of your office.

You request "that said schedule may be critically tested by the records of the Indian office, so that if any of the reserves have been retroceded to the United States, the same may be excluded, or if any omission exists it may be supplied, in order that this schedule may thus be perfected from, and verified by the records of the office of Indian affairs, and thereafter returned to your office as the basis of an account."

You suggest that a question arises whether the stipulation as to the two per cent., in the third proposition of the enabling act of April 18th,

1818, extends also to the Indian reserves, and upon that point, you request instructions to govern your office in the adjustment of the present claim.

I am directed by the Secretary of the Interior to inform you that on the receipt of your letter and the accompanying papers, they were referred to the Commissioner of Indian Affairs for an examination and early report. They were returned on this day, and I now transmit to you the papers and a copy of the letter of that officer to this department, under date of the 24th inst.

The act of 1857, and one approved March 2d, 1855, entitled, "An act to settle certain accounts between the United States and the State of Alabama," were recently under consideration, and the opinion of the department touching their bearing and effect upon the then pending claim of Illinois, was communicated to you on the 31st ultimo.

The department, upon a renewed examination of the subject, rendered necessary by your letter, adheres to that opinion as furnishing a sound exposition of the acts of Congress relating to the questions which both claims involve.

It was then held:

First—That two-fifths of five per cent. of the net proceeds of the lands lying within the State of Illinois, and sold since January 1st, 1819, had been disbursed by Congress in strict accordance with the compact between the general government and that State.

Second—That Congress had never relinquished its control over said two-fifths, or authorized the payment of the same, or any part thereof, to the State of Illinois.

Third—That Congress, by act approved September 4, 1841, had relinquished to the States of Alabama and Mississippi, the two-fifths of the five per cent. of the net proceeds of the lands lying within their respective limits which had been or should be hereafter sold. The effect of this legislation, and the provisions of the enabling acts of those States, in regard to the remaining three-fifths, was to secure to them five per cent. of the net amount of the sales of such lands.

Fourth—The act of 1855 and 1857 did not give to Alabama and Mississippi an additional per centum upon the proceeds of such sales; but requires the commissioner in the account between the United States and those States to include the reservations under treaties with certain Indian tribes, and estimating the same at the minimum value, to pay to the said States five per centum thereon, *as in case of other sales.*

Fifth—By the second section of the act of 1857, the commissioner was required to state an account between the United States and each of the States upon the same principle, that is to say, upon the principle that for the purpose of an account, lands embraced by permanent Indian reservations should be estimated as so much lands sold at one dollar and twenty-five cents per acre, and to allow and pay to each State such amount as should thus be found due.

At the time of the passage of the act of 1841, the general government had adopted no measures to execute the trust she had assumed in regard to the two per cent. fund of Alabama and Mississippi. It remained in the treasury, and by that act was relinquished to them upon condition that the legislature of each State should first pass an act declaring their

acceptance of said relinquishment in full of said fund, and embracing a provision to be unalterable without the consent of Congress; that the whole of said fund should be faithfully applied to the construction of certain specified work of internal improvement. Mississippi, by an act approved Feb. 6, 1842, (acts of Mississippi for 1842, page 119,) and Alabama, by an act approved Dec. 29, 1841, (acts of Alabama for 1841, page 39,) accepted the relinquishment on the terms and conditions required by Congress. The effect of this legislation was to relieve Congress from the trust, and to impose upon those States, respectively, the application of the fund.

There is obviously no substantial difference in principle between the direct payment to a State of the funds, and the expenditure of it for the purpose stipulated in the compact between the general government and such State. In either case, the lawful appropriation of the fund is a full discharge of the obligation of the general government, and a satisfaction of the claim of the State for the payment of the money, or the due execution of the trust.

The State of Illinois never released the general government from its obligation to appropriate the fund pursuant to the compact which was binding upon them both.

That obligation was fully discharged, and the former opinion cites the acts of Congress specifically providing for the expenditure of $606,000 within her limits in the construction of the National Road, and making it a charge upon her two per cent. fund. The actual amount so expended, appears, by an official statement from the books of the treasury, to be ($739,879 99) seven hundred and thirty-nine thousand, eight hundred and seventy-nine dollars and ninety-nine cents.

Regarding then the Indian reservations as so much land sold, it is very evident that the accruing two per cent. therefrom, added to that arising from actual sales, is not sufficient to reimburse the general government.

It is true that the compact has exclusive reference to moneys derived from sales. Reservations are put upon the same footing as sales by the acts relied upon in the support of the claim, and the department is not aware of any legislation requiring or directing any payment to Illinois on account of that fund.

That State is, in the opinion of the Secretary of the Interior, entitled to three per cent. upon the payment of Indian reservations within her limits.

The Secretary deems it proper to say, that the remarks in this and the preceding opinion, in regard to the settlement of accounts upon the terms prescribed by the act of 1857, are not meant to apply to States thereafter admitted into the Union. It is unnecessary to express any opinion as to the right of such States to the benefits of that act, as the question is not before him.

You will be pleased to furnish Mr. Morris, and His Excellency, the Governor of Illinois, with a copy of this opinion.

I am, sir, very respectfully, your obedient servant,

(Signed,) W. T. OTTO,

Assistant Secretary.

HON. J. M. EDMUNDS,

Commissioner of General Public Land Office:

SUPPLEMENTAL ARGUMENT OF MR. MORRIS, REVIEWING THE OPINION OF THE ACTING SECRETARY OF THE INTERIOR ON THE QUESTION OF THE RIGHT OF ILLINOIS TO FIVE PER CENT. ON HER INDIAN RESERVATIONS.

MR. PRESIDENT:—I mentioned to you, when I presented an argument on Wednesday last, in support of the claim of Illinois to two per cent. on the public lands sold in that State, that I was unable, at that moment, to complete my remarks relating to five per cent. on Indian reservations, for the reason that the question involving that fund had gone before the Secretary of the Interior, and was awaiting his action.

It was not until Saturday evening, the 26th of September inst., that a copy of his opinion was furnished me. I propose now to briefly review it separately, thinking that preferable to interweaving what I have to say about it in my former argument.

The simple question submitted to the honorable Secretary was, whether the State was entitled to three or five per cent. on her Indian reservations. It would seem that that question could have been disposed of in very few words, but the honorable Secretary appears to have availed himself of it to re-argue the whole question of Illinois' rights, which I have insisted upon, and to fortify his former views with such additional observations as suggested themselves to his mind. Especially has he given a summary of what he alleges those views, and his conclusions were.

My application for the payment of the five per cent. to Illinois on her Indian reservations did not go to the Interior Department on my motion or upon an appeal. After it reached there, it was determined in that department that the State was only entitled to three per cent. on those reservations, the balance being retained to cover alleged expenditures on the National Road.

I will not now enter into an argument showing that the Interior Department had no jurisdiction of the question, further than to say that the law of 1857 is *directory* to the Land Commissioner specifically, and not to the Interior Secretary, who has arrested the determination of the former officer, who agreed to state five per cent. as the amount Illinois is entitled to on her Indian reservations. Thus they come in direct conflict with each other; for it will be seen by the correspondence between myself and the honorable Land Commissioner embraced in my former argument, that he did not raise the point that the State is to be charged with anything on account of expenditures on the National Road, nor has he ever raised it, but the honorable Secretary has. In this conflict of opinion involving the whole subject which I have presented, I think your Excellency is bound to interfere, and necessarily settle the whole question. The same principle applies to both, and the settlement of one case must be the settlement of the other.

One point has been distinctly gained by the honorable Secretary's last opinion. He has committed himself to the decision, that Illinois is entitled to three per cent on her Indian reservations, when, according to his assumptions, there is no "land account" to "include" it in as the law requires. He still persists in the idea that the act of 1857 only applies to Indian reservations, and does not embrace anything else. As I have pretty fully discussed that point heretofore, it is not requisite I should enter largely upon it again.

If I could be surprised at any amount of opposition from the Interior Department to the claim of Illinois, I would be astonished at the late opinion of the honorable Secretary. It was evidently gotten up with express reference to throwing additional embarrassment in the way, and influencing your action, Mr. President. You cannot fail, however, to see at a glance that it is more specious than sound, and that the honorable Secretary still obstinately and resolutely persists in refusing to discuss the *law*, except the Indian reservation feature of it. I submit it is not a fair and legitimate use to make of the legislation, to *entirely suppress and keep out of view in his opinion, as he has done, that the five per cent. accounts of Alabama, Mississippi, and other States, were to be first stated under the provisions in their enabling acts*, and then the five per cent. on Indian reservations included.

The Alabama act of 1855, upon which the act of 1857 for the benefit of Mississippi and other States is founded, requires the account of that State to be stated under the sixth section of her enabling act, "for the purpose of ascertaining what sum or sums of money are due to said State, *heretofore unsettled*, under the sixth section of the act of March second, 1819, for the admission of Alabama into the Union." The simple statement of the account was not to be treated as a useless piece of labor, but required the payment of any balance of the five per cent. found due that State. When, however, it was stated, and the five per cent. account on Indian reservations was also stated, it was to be included in the first account and the two accounts became one; then the law required the payment of the whole amount remaining unpaid thereon. Because Alabama was to receive the five per cent. on her Indian reservations "as in case of other sales," which words the honorable Secretary uses and underscores, it does not follow that she was not to receive "the sum or sums of money *heretofore* unsettled," *arising from the sales of the public lands* within her limits under the provision of her enabling act. The title of the Alabama act is, "An act to settle *certain accounts*" (not to setle an account) "between the United States and the State of Alabama," the title of the Mississippi act following this language, and hence, it is clear that the Congressional legislation was designed to cover, as it does, the five per cent. on the public lands, and on the Indian reservations. The same may be said of the first section of the act of 1857, which was to settle the accounts of Mississippi on "the same principles of allowance and settlement," that is, the "principles" of stating both accounts, and then including the latter in the first, and allowing and paying to the said State five per cent. thereon. The act of 1857 was not to state the account of Mississippi on the same "principle" upon which the accounts of Alabama were required to be settled, referring only to one class of lands, but to state her accounts on the "same principles"—using the plural term—thus showing that the word "principles" means, as used in the law, the principle of stating the five per cent. on public lands, and also the principle of including it in the five per cent. on Indian reservations. But the honorable Secretary erroneously construes the word "principles" to mean the "principle" of including the Indian reservation five per cent. account in the land account of Alabama. How can he make the word "principles" apply with any sense or reason in that connection? He dashes off at conclusions with remark-

able facility, without regard to his premises, or without reference to the terms or words of the law.

If Alabama and Mississippi were to receive five per cent. on their Indian reservations, "as in case of other sales," of course it was provided that they were to receive it on "other sales," and on Indian reservations the "same ;" and if, by the second section of the act of 1857, other States, as it is provided therein, were to receive it on Indian reservations, they were equally entitled to receive it on their "other sales" the "same." If they were to be settled with on the "same principles," they were to receive the five per cent. on both classes of land "the same." But Congress put the conclusion beyond all doubt that the five per cent. was to be paid on both public lands and Indian reservation to other States, by the emphatic additional words, "*shall allow and pay to each State such amount as shall thus be found due*," and adding, "*estimating* ALL LANDS *and permanent reservations at* $1 25 *per acre.*"

In the first section of the act it is provided that the Indian reservations are to be estimated at $1 25 per acre, and in the second section Congress fixes the *same value* on "ALL LANDS," as well as permanent reservations as the *basis* for the computation on *both classes.*

What other result can be deduced than that they meant it should be *allowed and paid on both ?*

Again, Mississippi was to have her accounts stated on her public lands, and if any sum or sums of money were found due thereon and unsettled, that is unpaid, they were to be *allowed* and *paid.*

This is all Illinois asks. She wants her accounts stated, allowed and paid, as were those of Alabama and Mississippi. They received five per cent. on their public lands and Indian reservations, and she asks the United States to settle with her on the "same principles." What principles ? The "principles," as the Hon. Secretary has the idea, but rather an ungrammatical way of expressing it, of merging the five per cent. accounts on Indian reservations in some other existing law requiring the payment of the five per cent. on public lands. Oh, no ! What principles then ? The law says the "principles" of "stating, allowing and paying the accounts." The "other States" were also to have their accounts stated and have a right to their statement under the law if they have not been stated. The statement of a governmental account implies its payment, but the law removes all doubt on this point in the present case, by declaring "it shall be allowed and paid." The law also requires the whole accounts of each of the States embraced in it to be stated on their public lands, and while Alabama and Mississippi were to receive the amounts unsettled, the other States are entitled, by the second section of the act, to have theirs "allowed and paid."

But again, if, as the Hon. Secretary insists, Alabama and Mississippi had their two per cent. provided for by the act of 1841, their five per cent. on Indian reservations was not embraced in that act. He concedes they received that under the acts of 1855 and 1857. If the "other States" are to be settled with on the "same principles," how can he allow and pay to Alabama and Mississippi the *five per cent. on their Indian reservations*, and withhold the *same allowance and payment to Illinois ?* How can he pay to Mississippi *five per cent.* on her Indian reservations, and only allow and pay to Illinois *three per cent.* under the same act, on

her Indian reservations, as he has decided shall be done—thus discriminating against my own State, when the law places her on a full and equal footing with Alabama and Mississippi? It is very obvious he cannot legally do it. It is very obvious he has sought to avoid the law to the injury of Illinois, and not to expound and enforce it, and in doing so, his anxiety to escape from the obligations it imposes on him, has led him so far, that he has by his last decision, overthrown by his *act* all his arguments, and stands condemned before the bar of his own reasons. This is ever the result with those who deviate from the plain line of duty and follow a shadow and not a substance. Let me again repeat the proposition upon which my first argument was based and which comprehends all the questions involved in the issue which I make with the Secretary of the Interior. It is this. The act of 1857, in its terms and designs, not only required that the Indian reservations should be given a status similar in character to other public lands, but also that an account should be *stated*, *allowed* and *paid*, *embracing all the public lands within the limits of the State*, and this was a requirement, *positive* and *peremptory* and *additional* to the new definition given by the statute of the character of the Indian reservations, and to the direction given of the mode of stating them.

The "principles" upon which the accounts were to be stated were not only the inclusion of the Indian reservations, but also the *stating*, *allowing* and *paying accounts created by pre-existing provisions in the enabling acts of the several States;* yet the Hon. Secretary still persists in maintaining his right to travel within the circle of Indian reservations, and refuses to overstep their boundary.

Hear him. He says:

"By the second section of the act of 1857, the Commissioner was required to state an account" (mark, he does not say *upon what,*) "between the United States and each of the other States upon the same principle, that is to say, upon the principle that for the purpose of an account, lands embraced by permanent Indian reservations should be estimated as so much lands sold, at one dollar and twenty-five cents per acre, and to allow and pay to such State such amount as should thus be found due."

Not a word is to be found in the language of Hon. Secretary, that the estimation was to be made on "*all lands* and permanent reservations"—not a word that the accounts of the other States were to be stated under the provisions of their enabling acts, or the acts admitting them into the Union. All this is carefully, and evidently designedly, kept out of view. But more. The Hon. Secretary has misquoted the language of the second section of the act of 1857. He says that by that section the Commissioner was required to state an account between the United States and each of the other States upon the same "principle," whereas, the word used in the law is "principles"—a very different word and having a very different signification, as applied in the section to the substantive matter of legislation.

To state "an account" upon the "principle of including the per cent. on Indian reservations in an account of the five per cent. on public lands, is quite a *different* thing to stating "certain accounts" of the other States upon the "same principles" applied to Alabama and Mississippi in allow-

ing and paying to them five per cent. on their public lands and Indian reservations.

The Hon. Secretary is somehow so unfortunate in writing his opinions as to drop the little letter "s."

The re-statement of the first opinion of the Hon. Secretary in his second one, upon the simple question before him, was wholly unnecessary for the guidance of the Land Commissioner in the premises, and was evidently intended for your eye, Mr. President.

The Hon. Secretary affirms that the first position he held was:

"That two-fifths of the five per cent. of the net proceeds of the lands lying within the State of Illinois, has been disbursed by Congress in strict accordance with the compact between the General Government and that State."

This I utterly deny, and challenge the Secretary to the proof. It will not be sufficient for him to say that the amount expended in his own State (Indiana) on the National road, which is now the *private property* of that State, or that the amount wasted upon the National road in Illinois is a legal compliance with the sixth section of the act admitting her into the Union. I have heretofore discussed this point, and will not elaborate it, especially in view of the fact that the Hon. Secretary has not discussed it, and contented himself with simple naked declarations concerning it. The question, however, of expenditures on the National road, as I have heretofore shown, and desire again to impress, has nothing to do with the one I have presented.

Further on in his second opinion, the Hon. Secretary says:

"The State of Illinois never released the General Government from its obligation to appropriate the fund pursuant to the compact which was binding upon them both."

Two inferences are deducible from this language.

First, that the State of Illinois has yet a subsisting demand against the General Government for this fund, which she has never relinquished, as the Hon. Secretary admits, and I thank him for his full, free and frank acknowledgment of the fact. It puts it and the rights of the State beyond all cavil or doubt, and dispenses with any argument to sustain the point. It does more. It overthrows the Hon. Secretary's own reasoning and deductions that the State is not entitled to the money I claim for her. She has never relinquished her right to it, has never obtained it, and it cannot be shown that it has ever been expended in compliance with the sixth section of the act admitting her into the Union. I again thank the Hon. Secretary for his admission. He admits that the compact was binding both on the General Government and the State, and that the State has never released the General Government from the obligation imposed upon her by that compact. Thus the Hon. Secretary has virtually acknowledged the validity of the claim I represent, and that Illinois has always regarded it as valid.

Hence, second, that the General Government is still holden to Illinois for the expenditure of the fund in compliance with the sixth section of the enabling act of that State.

But if we had run the statement back, and connect it with another, with which it has no connection, to-wit: with one that the act of 1841 relinquished the two per cent. to Alabama and Mississippi on conditions

"declaring their acceptance of said relinquishment in full of said fund, and embracing a provision to be unalterable, without the consent of Congress, that the whole of said fund should be applied in the construction of works of internal improvement," still that does not help the Hon. Secretary out of his trouble. There are no restrictions in the acts of 1855 and 1857, such as are found in the act of 1841, imposed upon the States, and it may be, for aught you or I know, Mr. President, that one object Alabama and Mississippi had in procuring the additional legislation of 1855 and 1857, was to get rid of the restrictions imposed upon them by the act of 1841, in regard to the expenditure of their respective amounts. However this may be, it is certain the restrictions were removed, and all the States left free to appropriate their several sums as they might determine best.

I am wearied, Mr. President, with answering such arguments as I have just referred to, and with which the Hon. Secretary's opinions abound, for there is nothing in them, and besides they are inconsistent with themselves.

Immediately following the last words I have quoted from the Hon. Secretary's opinion, is the following: "that obligation was fully discharged" (I have emphatically denied, and I think clearly shown that this is an erroneous conclusion) "and the former opinion cites the acts of Congress specifically providing for the expenditure of $606,000 within her limits in the construction of the National road. The actual amount so expended appears from the books of the Treasury Department to be ($739,879 99) seven hundred and thirty-nine thousand eight hundred and seventy-nine dollars and ninety-nine cents.

It thus appears from the Hon. Secretary's statement that $33,879 99 were expended more than *there was any appropriation to cover!* Will he insist that that amount is properly chargeable to the two per cent. fund of Illinois also?

The most important part of the Hon. Secretary's statement is, however, that the books in the Treasury Department show the expenditure of $739,879 99, from which the inference will be drawn, in the absence of the facts, that that amount is charged against Illinois' two per cent. fund on those books. Such is not the case, and I cannot make the truth about it more patent than to give the following certificate of the Acting Register of the Treasury:

TREASURY DEPARTMENT, REGISTER'S OFFICE, *Sept.* 26, 1863.

I do hereby certify that there is no account on the books of this office in relation to the two per cent. fund with the State of Illinois. No sum has been credited to said State on account of said fund, nor has there ever been any amount charged against it in this office.

R. SOLGER,
Acting Register.

When the account has not been stated—when nothing has been charged against it in the Treasury Department—when it is remembered that the Interior Secretary cannot act officially upon any business pertaining to the Treasury, and has nothing to do with, or control over it, it is indeed most extraordinary that he should base his official action upon what does pertain to the Treasury Department, more especially

when the books of that department do not show that one dollar has ever been charged by the United States against the two per cent. fund of Illinois.

Let me recapitulate. The Hon. Secretary gives in his last opinion his interpretation of the second section of the act of 1857. He says:

"By the second section of the act the Land Commissioner is required to state an account between the United States and each of the other States upon the same principle, that is to say, upon the principle that for the purpose of an account lands embraced by permanent Indian reservations, should be estimated as so much land sold."

The language is somewhat obscure and ambiguous, but the Hon. Secretary means by it simply this, I suppose, that the other States should be allowed five per cent. on their Indian reservations, and for that purpose the Land Commissioner should state an account with them on that principle—that is, on the principle of allowing them five per cent. on their Indian reservations. This all the Hon. Secretary makes out of the second section. I have already shown that he has misquoted it, and that "principles," not "principle," is the word used. I have also shown that two accounts were to be stated with Alabama and Mississippi, and then merged into one. The other States were to have their accounts stated on the "same principles," that is including the account of the five per cent. on public lands and five per cent. on Indian reservations, and, not merely, as the Hon. Secretary has it, stating an account upon the "principle" of allowing five per cent. on Indian reservations.

It seems to be very generally feared, by those with whom I have talked upon the subject, that the President, being a citizen of the State, will feel too much embarrassed to decide the claim in her favor. As that consideration is unworthy of a great mind, and has no legal bearing upon the question, I am unwilling to believe it will be allowed to enter into its determination.

The truth is, there never should have existed a necessity for taking an appeal to the President, and none ever would have existed, if the case had not unfortunately fallen into the hands of those who control the Interior Department, and from whom Illinois has nothing to expect but bitter and unrelenting hostility. This is true, and I mean to be honest enough to say it. Indeed, a failure to proclaim the fact would be injustice to the State. Of course, the appeal was not held in the Interior Department for six months merely to enable the Secretary to make up his opinion on the law! There was another reason and another motive for the delay, which I intend to speak of at the proper time.

The Commissioner of the General Land Office, for whose integrity I have the highest respect, and whose promptness and fidelity in the discharge of public business is deserving of the greatest commendation, took the right ground in reference to the law of 1857, although I differ with him in the construction of it. His position was that it only applied to Indian reservations, and consequently did not authorize, in his judgment, the payment of the two per cent. on public lands. He never quibbled or raised any question about the expenditures on the National road; but properly comprehended the point that if the law of 1857 embraced the per cent. on public lands, it was folly to interpose the assumption that it had already been paid to the State. If it provided for the

payment of the per cent. on both the Indian reservations and public lands, it followed as clear that one could not be paid without paying the other; because if both objects were embraced in the law, both were equally entitled to be respected. Hence the Land Commissioner declined to state the account of Illinois on the public lands for the reason that, in his judgment, the acts of 1855 and 1857 applied or related exclusively to Indian reservations. He did not abandon that ground and attempt to fortify his position by asserting that the money had been expended years ago for other objects! as was done in the Interior Department, where, if any such fact existed, they had no legal right to take cognizance of it. It was the business of another, and not the Interior Secretary's. It was no concern of his what had or had not been paid out in the Treasury Department. The simple point he was called upon to decide was the one decided by the Land Commissioner, to-wit: do the laws of 1855 and 1857 require the statement of the five per cent. account on public lands as well as on Indian reservations? If they do not it is folly to talk about the amount having already been expended —if they do, the law of 1857 is imperative that it "shall be allowed and paid." This is the only rational view to take of the subject. The Land Commissioner took it, and confined his action to the construction which he gave to the laws, without entering into an extended and laborious exploration of things past, to see if he could not possibly find some extraneous consideration to defeat their operation. That he was wrong in his construction of the statutes, I think I have clearly shown; that he was correct in confining his decision within the terms of the act of 1857 is beyond all doubt. If the Interior Secretary had taken this course there would be less reason to complain. The law of 1857 either does or does not confer upon the State the right to the money I claim for her. If it does confer it that is an end of the matter. If it does not confer that is also an end of it. The State stands by the law and protests against reasons being assigned for disregarding it which rest on no better foundation than the exhumed remains of obsolete enactments.

I repeat, the State's claim must be determined by the law of 1857. If that embraces the per cent. on public lands the United States has no escape from its payment, except in a determination of its ministerial officers not to execute it. Though temporarily defeated I see no cause for despondency. I have a case which the President understands and respects, and will assuredly decide for the State, as he believes the law to be with her, and certainly there can be no doubt about his power to entertain the appeal.

Respectfully submitted,

I. N. MORRIS,

Agent and Attorney for the State.

QUINCY, *October*, 1863.

ADDITIONAL SUPPLEMENTAL REPORT

ON THE

TWO PER CENT. FUND,

SUBMITTED TO HIS EXCELLENCY,

RICHARD YATES,

GOVERNOR OF THE STATE OF ILLINOIS.

To His Excellency Richard Yates,
Governor of the State of Illinois:

Sir—In October, 1863, I submitted to you a supplemental report on the two per cent. fund, due from the United States to the State of Illinois, for road purposes. The interest which you have uniformly manifested in the subject, encouraged me to persist in pressing the State's demand. I was still further encouraged by my increased conviction of its justice. That the State will eventually obtain the sum due her, I have not a solitary doubt. The right must prevail in the end.

It will be remembered that at the time of the submission of my supplemental report, the cause of the State was still pending before the President, on appeal from the Interior Department. In the early part of December following, I again repaired to Washington, and found the appeal still undecided. I called upon the President soon after, in conjunction with Mr. Washburne, Judge Norton, Mr. Arnold, Mr. Ross, Mr. Knapp and Judge Wm. J. Allen, members of Congress from the State, and we jointly urged upon his Excellency the necessity of action. He received us kindly, and the interview terminated by leaving an encouraging hope. Delay still following, however, the Hon. O. H. Browning and myself, from time to time, urged upon the President to decide the case, and from day to day expected a decision to be rendered. I was therefore somewhat surprised to find it had been referred to the Attorney General, who held it for nearly three months, although the

Hon. O. H. Browning and myself were almost daily importuning him for action, and when he finally delivered his opinion he ante-dated it.

The following correspondence and subjoined documents will show pretty fully what transpired, in regard to the claim I represented, at Washington during my last visit there, which commenced in the fore part of December and did not terminate until April. I trust it will be found I did all it was possible to be done in the premises, and that my course will meet your approval and the approval of the Legislature and people of the State, whose interest I have labored to promote to the best of my ability, through a protracted controversy.

WASHINGTON CITY, *Dec.* 31, 1863.

Hon. J. M. EDMUNDS, *Com'r Gen. Land Office.*

SIR—Will you oblige the State of Illinois by furnishing to me, as her agent, a statement of the gross amount of two per cent. of the net proceeds arising from the sales of the public lands, made within her limits since January 1st, 1819, after deducting all expenses incident to the same; and in doing so please specify particularly the amount of said per cent. which thus accumulated *after* Congress had ceased to make further appropriations for the construction of the National or Cumberland road.

I remain very sincerely and truly your friend,
I. N. MORRIS.

GENERAL LAND OFFICE, *Jan.* 5, 1864.

Hon. I. N. MORRIS, *Present.*

SIR—I have the honor to acknowledge the receipt of your letter of the 31st ult., requesting a statement of the gross amount of two per cent. of the net proceeds arising from the sales of public lands in Illinois, since first January, 1819, after deducting all expenses incident to the same; also, to specify the amount which had accumulated after Congress ceased to make appropriations for the National or Cumberland road.

In reply I have to state that the *gross* amount received for lands sold from that date to May 25th, 1838, was $11,064,594 03; from that date to Dec. 31, 1860, the receipts since 1860 not warranting an adjustment, was $13,794,574 20; total, $24,859,168 23. To which should be added the sum of $52,193 24, the estimated value of lands reserved under treaties with certain Indian tribes—making an aggregate of $24,911,-361 57. The expenses incident to the same can only be obtained from the books in the office of the Register of the Treasury, where the net receipts may be shown, the data in that respect not appearing in our records of adjustment.

Very respectfully, your obedient servant,
J. M. EDMUNDS, *Commissioner.*

WASHINGTON, *Jan.* 6, 1864.

TO HIS EXCELLENCY, A. LINCOLN, *President of the United States :*

SIR—I beg leave to submit a few additional considerations, in connection with the claim of Illinois to the two per cent. fund, arising from the net proceeds of the sales of the public lands within her limits.

The State had, undoubtedly, a right to know, from the Interior Department, upon what ground it rejected her demand. If the law, approved March 3d, 1857, for the settlement of certain accounts between the United States and the state of Mississippi, and other states, only applies to Indian reservations, then that Department should have rested its objection upon it. If, however that act is not to be regarded as a bar to the right claimed by my State, and the acts making appropriations to the National road are insisted on as such a compliance with the terms of the compact between the United States and Illinois, as to cut off the right of that State to the money claimed to be due her, *that* ought to be assigned as the reason for withholding it. If the Honorable Assistant Secretary had assumed, exclusively, one position or the other, as he was bound to do from the character of the legislation, his opinion would have been more consonant with established legal rules, and less disingenuous. Had he fixed upon some definite and positive enactment as a basis for, and in justification of, his opinion, it would have been much wiser and safer than to have relied on vagrant authority.

As to your power to hear and determine the case, I think there can be no doubt. In a constitutional sense, it was pending before you from the moment I made the application for the money on behalf of the State, in the General Land Office, so that the formal appeal was a work of mere supererrogation.

By the constitution you are made the Executive to execute the laws. By that same instrument you are made Commander-in-Chief of the army and navy. By virtue of your authority as such commander, you can reverse the orders, decrees and proclamations of your inferior military officers, and during the present rebellion have exercised that power. It would seem clear, therefore, from analogy and parity of reasoning, to say nothing further upon the subject, that you have the right, as the Executive, to reverse and annul, or overrule, the opinions and decisions of your ministerial executive officers. The same provision of the constitution which confers upon you the powers of a Commander-in-Chief, also declares you "may require the opinion, in writing, of the principle officer in each of the executive departments, upon any subject relating to the duties of their respective offices," but it does not declare, nor does the constitution anywhere declare or provide, you shall be bound by such opinion. Its character is purely *advisory*, and was not intended to interfere with or obstruct your duty to take care that the laws be faithfully executed. That duty and that power the constitution invests complete and entire in yourself. It not only invests it there, but it imposes a positive injunction on you to perform it. It is an executive and not a judicial duty.

The question of the President's constitutional power and duty, in cases where his subordinate executive officers refuse or neglect to exe-

cute the laws, or perform their duty under them, was elaborately and ably discussed, by Chief Justice Taney, when Attorney General, in his opinion rendered to the Secretary of State on the 28th of December, 1831, on the libel case then pending before the District Court of New York, involving the alleged forfeiture to the United States, under our revenue laws, of the stolen jewels of the Princess of Orange. To this opinion you have not heretofore been referred, and I beg leave to direct your attention to it. See Gilpin's Opinions of the Attorney Generals, pages 853–860.

The jewels were of very great value—were stolen and brought to this country without the consent of the owner—were libelled by the District Attorney of the United States, and as soon as they were known to be here they were demanded by the minister of the King of the Netherlands, acting under the direction of his Government, as the property of the Princess, who was one of the family of the King. The District Attorney declined to discontinue the proceeding against them, and the question arose as to the power of the President to direct him to do it. For convenience, I will give some extracts from Mr. Taney's opinion, although I have referred you to it as a whole. He says:

"The main question, and the only one about which there seems to be much difficulty is, whether the President may lawfully direct the District Attorney to discontinue the libel now pending against these jewels in the district court of New York. The libel is in the name of the United States; it was filed by their attorney in their behalf, and claims to have the property condemned as forfeited to the United States for an offense alleged to have been committed against their revenue laws.

"Assuming that the District Attorney possesses the power to discontinue a prosecution, the next inquiry is, can the President lawfully direct him, in such a case, to do so? And this, I understand, is the chief point of difficulty.

"I think the President does possess the power. The interestso f the country, and the purposes of justice manifestly require that he should possess it, and its existence is necessarily implied by the duties imposed upon him in that clause of the constitution before referred to, which enjoins him to take care that the laws be faithfully executed. Cases readily suggest themselves which show the necessity of such a power to enable him to discharge this duty.

"Suppose a foreign ship with public stores on board is taken possession of by a mutinous crew and brought to the United States, that the stores are seized by the collector and libelled for a breach of the revenue laws, and pending the libel the foreign Sovereign demands them of the Executive of the United States, and their is no other claimant of the property, may not the President order the prosecution to cease and the stores to be delivered up? Or must the United States prosecute, by its officer, a claim which it knows to be unfounded, against the property of a foreign and friendly nation.

"Indeed, a case might readily be imagined in which justice to an individual would equally require the existence of the power and its exercise by the President. For, suppose a merchant ship bound from one foreign port to another, is piratically seized upon by the crew, and brought into the United States, and the goods of the merchant are seized for a breach

of our revenue laws, on a libel filed against them, and suppose the officer continue the prosecution after these facts are made known to the government; if the President was satisfied that such a prosecution was not a faithful execution of the laws, but unjust and oppressive to the innocent merchant, would he not have a right to order the prosecution to be discontinued.

"If it should be said that the District Attorney having the power to discontinue the prosecution, there is no necessity for inferring a right in the President to direct him to exercise it. I answer, that the direction of the President is not required to communicate any new authority to the District Attorney, but to direct him, or aid him in the execution of the power he is admitted to possess. It might, indeed, happen that the District Attorney was prosecuting a suit in the name of the United States against their interest and against justice, and for the purpose of oppressing an individual. Such a prosecution would not be a faithful execution of the law. and upon the President being satisfied that the forms of law were abused for such a purpose, and being bound to take care that the laws were faithfully executed, it would be his duty to take measures to correct the procedure, and the most natural and proper manner to accomplish that object would be to order the District Attorney to discontinue the prosecution. The District Attorney might refuse to obey the President's order, and if he should refuse, the prosecution, while he remained in office, would still go on, because the President could give no order to the court or the clerk to make any particular entry. He would only act through his subordinate officer, the District Attorney, who is responsible to him, and who holds his office at his pleasure. And if that officer still continued a prosecution which the President was satisfied ought to be discontinued, the removal of the disobedient officer, and the substitution of one more worthy in his place, would enable the President, through him, faithfully to execute the law. And it is for this, among other reasons, that the power of removing the District Attorney resides in the President.

"Upon the whole, I consider the District Attorney as under the control and direction of the President, in the institution and prosecution of suits in the name of the United States; and that it is within the legitimate power of the President to direct him to institute or discontinue a pending suit, and to point out to him his duty, whenever the interest of the United States is directly or indirectly concerned. And I find, on examination, that the practice of the government has conformed to this opinion, and that, in many instances, when the interposition of the Executive was asked for, the case has been referred to the Attorney General, and, in every case, the right to interfere and direct the District Attorney is assumed or asserted.

"It may be said that these cases were not prosecutions for forfeitures incurred by a breach of the revenue laws, and that the authority to remit for a violation of the revenue laws being given to the Secretary of the Treasury, it cannot afterwards be exercised by the President. In reply to this, I answer: First, that the case upon which the President is requested now to act, is not one given to the Secretary. He is authorized to act where a forfeiture has been actually incurred—where an offense against the laws is admitted or proved. But the case presented to the

President, if successfully made out, is one in which no offense has been committed, and no forfeiture has been incurred. And if it be shown to be one of this character, then it is not given to the Secretary of the Treasury, and he has no power over it. In the second place, if this case were clearly embraced in the powers given to the Treasury Department, it would not and could not deprive the President of the powers which belong to him under the constitution. The power conferred on the Secretary by the law of Congress, would be merely in aid of the President, and to lighten the labors of his office. It could not restrain the limits of his constitutional power."

I suppose no one will doubt but that the President has the same power over the positions and acts of his cabinet officers, and the Commissioner of the General Land Office, that he has over the positions and acts of the district attorneys. They are but his clerks, subject to his direction, and if either of them fail to execute a law, they, being but the creatures of his will, it is his duty to see that they do it.

I submit, therefore, that the authority I have just quoted, and those equally high, heretofore cited, should be regarded as of more weight than the opinion of the honorable Assistant Secretary, who declined, upon my praying an appeal to you, to "send up the papers," assuming the ground, in doing so, that his opinion was final and conclusive—that, although you might differ from him in the construction of the law, still you had no right to direct him to execute it—that "Not discovering," (to use the language in his letter to me,) "from the attention that I have been able to bestow upon the subject that an appeal lies in such a case, from the decision of the department, I shall await the order of the President in the premises"—that you had no power or right, in his opinion—for that is the meaning of it—to look at the papers; no right to inquire whether justice had been done to Illinois, whether the law had been executed; no right to give an opinion contrary to his; no right to question his act, thus, in effect, saying "I am greater than thou." This theory and exposition of our political organization seems to have been unknown to our earlier statesmen, and has, for the first time in our history, been seriously urged by a subordinate ministerial officer, in defense of his own act and assumed superiority.

If this new reading of the constitution should become the settled doctrine of the executive department, and be regarded as a sound legal interpretation of that instrument, I readily admit that my State is without executive remedy, and that she has heretofore totally misapprehended constitutional law. She has relied upon older authorities, but it may be that the honorable Assistant Secretary has successfully overthrown them, and given a direction to the government different from that it has heretofore pursued. It is, indeed, certain that if you have no authority to look into the act of your subordinates; no authority to inquire whether, in the case of Illinois, the law has been executed, you have no power over the Interior Department—no, not even a supervisory power—no right to inquire whether it has executed the laws, although the constitution provides you shall "take care" that they are executed; and thus the departments are exalted over the Executive, and a vital blow is struck at the supremacy of the constitution.

I cannot believe that your Excellency will understand the subject as

the honorable Assistant Secretary does, or will so act upon it. In your letter to me, speaking of the case of the State, when, in the Interior Department, you say:

"When he (meaning the Interior Secretary) shall have acted, if his action is not satisfactory, there may, or may not, be an appeal to me. It is a point I have not examined; but if it then be shown that the law gives such appeal, I shall not hesitate to entertain it when presented."

I trust it is not too much for me to say it has been shown you have that power; that unless you possessed it, your dignity and office would subordinate below the dignity and offices of the creatures of your own will or appointments. Such being a constitutional impossibility and understanding that, so far as the case of Illinois is concerned, the real and only question involved therein is, your power to hear and pass upon her rights, I rest under the confident expectation they will be upheld, and your authority vindicated.

There are some things in this connection that I ought to say in justice to my State, but which I will omit. I have endeavored to confine myself, as far as possible, to the great issue presented, and permit outside pressure and influence, which has been brought to bear against the State, from a certain quarter, to pass by, at least for the present, unnoticed. They are as detrimental to those engaged in producing them, as they are injurious to Illinois, who has so nobly stood by every duty required of her, and promptly responded to every call upon her patriotism. If she is to be denied by the general government her plainest and simplest rights, she must feel her inferiority among the sisterhood of States, and grow more or less indifferent to a government that treats her unjustly.

But if the constitutional requirement is disregarded or set aside, and the legislation of Congress is relied on, that would seem to be equally clear in the case of Illinois, pending before you, as it has grown out of and relates to the public lands. The first section of an act (see U. S. statutes, vol. 5, p. 107–8,) entitled "An act to organize the General Land Office," approved July 4th 1836, is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the passage of this act, the executive duties now prescribed, or which may hereafter be prescribed by law, appertaining to the survey and sale of the public lands in the United States, or in anywise respecting such public lands, and also such as relate to private claims of land, and the issuing of patents for all grants of land under authority of the government of the United States, shall be subject to the supervision and control of the Commissioner of the General Land Office, under the direction of the President of the United States."

This statute is merely declaratory of the President's constitutional duty and power.

Upon one point your Excellency is laboring under a misapprehension. In your letter to me, under date of the 26th of August last, among other things you say:

"Now, my understanding, is, that the law has not assigned me, specifically, any duty in the case, but has assigned it to the Secretary of the Interior."

The law, as you will see by again referring to it, has not assigned to

the Interior Secretary any duty, but assigned it to the Commissioner of the General Land Office. All the power the secretary had, was to decide the appeal upon *the record sent up*, which he did not do. The acts of the Land Commissioner "in anywise respecting public lands," are placed by the law directly under your supervision. But the constitutional duty of directing the execution of the laws rises to a higher dignity than the command of a Congressional statute. There is one point under which I have been laboring under some misapprehension, though it has been against and not for the State. I supposed, from information which I received, that Missouri had applied for the payment of her two per cent. under the act of 1857, upon which I rely, as supporting the claim of Illinois, and that her representatives in Congress had only resorted to the passage of a special act, providing for its payment, to avoid the objections of reluctant governmental officers. Such seems not to be the case. With a view of ascertaining the facts in regard to the matter, and why Missouri did not rely upon the legislation of 1855 and 1857, instead of asking for and obtaining a special act for her relief, I addressed the Hon. James S. Green, formerly a United States Senator from Missouri, a letter, and beg leave respectfully to transmit herewith a copy of his reply, to which I ask your special attention, as it not only states the reasons why the special act for Missouri was passed, but contains also a brief, yet exceedingly lucid exposition of the laws upon which rest the claim of Illinois. I have no doubt but that if my State had the benefit of a special act she would be resisted in the departments, as was Missouri, after she obtained her act, since the plainest duty required by the act of 1857 towards her, to state her account that she may know how it stands, even if the payment of the sum due is thereafter denied, has been totally disregarded, and the law set at open defiance.

As to the per cent. on Indian reservations, it would be hard to conceive of or find a reason to justify the assumption that when Congress passed the acts of 1855 and 1857, it contemplated or even dreamed of appropriations made for the construction of the National road, ranging in their date from more than a half to a quarter of a century before, being applied as an offset by the government to that per cent. The same is equally true of the per cent. on the public lands. One class of legislation has no reference to the other, but each is complete and independent in itself. If Congress had intended the offset, it would have so provided, and failing to make the provision, it cannot be supplied by a ministerial officer. This doctrine would seem to be a settled rule of construction, and has been so held in the Attorney General's Office. See Mr. Wirt's opinion in "Gilpin's Opinions of the Attorney Generals," pages 1385–6–7, wherein he determined, as early as 1818, that Congress having failed to insert, in express terms, in an act making an appropriation for the completion of contracts on the National road, a provision that the sum appropriated should be reimbursed to the treasury out of the two per cent. land fund of Ohio, it could not properly or rightfully be charged to that fund. The conclusion would hence seem irresistible that if the government could not charge the appropriation referred to by Mr. Wirt, to the two per cent. fund of Ohio, it has as little right to offset the sum expended on the National road, in Illinois, against the

appropriation of her two per cent. embraced in and covered by the acts of 1855 and 1857, which declare it shall be "stated, allowed and paid," and in which there is no provision for or even intimation of such offset. If any right to make it ever existed, which I affirm is not the case, that right was released or relinquished by the subsequent legislation referred to. Where is the provision which authorizes the expenditures on the National road to be charged against the two per cent. on the Indian reservations in Illinois? Where is the provision which authorizes such a charge to be made against the two per cent. land fund of that State? There is no such legislation, and no reference to it in the acts of 1855 and 1857, nor can they be tortured into any such construction. So plain are their provisions, so direct and mandatory, that the Honorable Assistant Secretary did not venture upon such an experiment. In the absence, then, of any such legislation or provision, the opinion of Mr. Wirt is conclusive that the expenditures on the National road cannot be legally or justly charged against the claim of Illinois. By the acts referred to the appropriation is absolute and unconditional, and the rights of the State cannot be defeated, except by a total disregard of them.

In other words, the opinion expressed by Attorney General Wirt is, in effect, that as the act for the appropriation of money towards the building of the National road did not say that the sum appropriated was to be re-imbursed to the treasury out of the five per cent. land fund, created by the compact between the United States and the State of Ohio, that appropriation must be regarded as an independent gift or grant, and the executive officers of the United States could not make the five per cent. fund liable for such additional and independent appropriation. So the acts of 1855 and 1857 are to be regarded as independent of, and having no relation to the appropriations to the National road. And as they contain no terms relative to an offset, re-payment, or re-imbursement out of any such fund, of the sum required to be "stated, allowed and paid," the executive officers have no authority to subject such fund to any such liability. Congress, when passing the acts of 1855 and 1857, was legislating upon the five per cent. arising from the sales of the public lands, and providing for the inclusion therein of the five per cent. on Indian reservations, and in nowise in regard to the expenditures on the National road. This conclusion is so clear and so inevitable, both from the laws themselves and the history of their passage, that all doubt on the point is effectually and entirely removed.

Every statute which contains no terms connecting it with another, must necessarily be construed by itself. The only connection the laws of 1855 and 1857 has, is with the provision setting apart the five per cent. fund embraced in the enabling acts of the states to which they refer. They embrace appropriations covering that object, and the five per cent. on Indian reservations and nothing more, and they do this without limitation or conditions.

There is a partial view of the question which I have not separately presented, for the reason I desired to present it as a whole. I will mention it now, however, for your reflection, without discussing it. The Assistant Interior Secretary pleads the law making appropriations to the National road in bar of the claim of Illinois. A large amount

(and I have taken steps to ascertain definitely what it is) of the two per cent. road fund belonging to the State, accumulated in the treasury, from lands sold, *after* all appropriations for the Cumberland Road had ceased. Is not the State at least entitled to the amount which thus came into the treasury? I do not raise the point with a view of yielding any part of the claim, but as suggestive of the legal impossibility of the appropriations referred to being applied as an offset to a subsequently accumulated fund.

The first act making an appropriation to the National road was approved March 29, 1806, and the last was approved May 25, 1838. (See abstract of United States Statutes at large, pages 357–8.) The State was not admitted into the Union until April 18, 1818, and if her two per cent. fund is to be charged with expenditures on account of the National road, those made before her admission cannot certainly be set down against it, and yet there would seem to be as much propriety in making such a charge as the one before mentioned.

But I have heretofore shown the want of authority in the officers of the government to make the charge referred to as a whole, against the State, especially in view of the acts of of 1855 and 1857, and it would be out of place to duplicate that argument in this communication. It is, however, proper for me to say, in view of the fund which accumulated, after appropriations for the National road had ceased, that Congress was to "disburse" it "in making roads leading to the State." How could such "disbursement" be made when there was no such fund, and the lands had not even been sold. In my judgment, there can be no other legal interpretation of the sixth section of the act admitting Illinois into the Union, but that the money was to be "disbursed" as it accumulated, or thereafter. The word "disburse" means to "pay out, to expend, to spend." How could that be paid out, expended, or spent, which had no existence? It was evidently intended, from the language used in the section just mentioned, that Congress should not and could not, without the consent of the State, make a wasteful expenditure of the money, as it did, or it would be more proper to say a wasteful expenditure of the money of the government, and then have its officers to claim, in the face of an act recognizing her right to it, that the treasury was to be reimbursed out of it. The language of the sixth section pre-supposes the existence of the fund before its distribution, and any anterior use of it, I insist, was unauthorized by the compact between the United States and the State of Illinois, and in palpable violation of her rights. Her representatives in Congress would be continually increasing, and new interests might arise which would give a different direction to an accumulated fund, to that which it might take when anticipated. The State, too, as she advanced in population and representation, would be better able to protect her rights. However, I have said I would not discuss this point, nor will I. I have thrown out but a few suggestions upon it, which I think are sound and well taken.

Having now, as I trust, performed my duty to the Governor, Legislature and people of my State, and said this much in addition to what I before have said, I hope to stand vindicated in their judgment, and have respectfully to inquire how soon it will be convenient for your Excellency to dispose of the cause of the State. I am fully sensible of

the great and important duties pressing upon you, and although the interest of Illinois is of vital moment to her, I will not unduly urge it to the detriment of your Excellency's convenience in other more pressing matters.

The result is, of course, with you. The authorities would seem to be sufficient on the legal points. No one has ever questioned the equity of the claim. I assume that I fully appreciate what some may suppose to be the delicacy of your position, being a citizen of the State, but that consideration constitutes no reason why justice should be withheld from her, nor will it influence a great mind like your own.

I have the honor, Mr. President, to subscribe myself, your obliged and humble servant,

I. N. MORRIS.

WASHINGTON CITY, *January* 21, 1864.

HON. EDWARD BATES, *Attorney General of the United States:*

SIR:—I have been unofficially informed, but I do not question the correctness of the information, that his Excellency, the President of the United States, has referred to you, for legal determination, the question of his power to direct the Commissioner of the General Land Office to execute the law of the third of March, 1857, passed for the benefit of Mississippi and other States, in pursuance of my application on behalf of the State of Illinois, for the recognition and enforcement of her rights under said act.

As the claim which I presented for my State has been pending since December, 1857, and which, during the past year, I have been prosecuting under the authority of the Governor and Legislature thereof, is one of no ordinary interest and importance to the people of Illinois, you would confer a great favor upon them if you would, at an early period, render your opinion upon the point referred by his Excellency to you.

I presume, sir, you have been placed in possession of my original and supplementary report to the Governor of my State, relating to the matter of the claim, and of my communication to the President on the same subject, under date of the 6th instant, which was accompanied by a letter addressed to me, by the Hon. James S. Green, in which the statement of facts therein contained and the legal deductions therein drawn, were indorsed and concurred in by the Hon. Frank P. Blair, in a written communication to me made on yesterday.

The latter managed the claim of Missouri in the House of Representatives, and the former in the Senate.

But as the *single* point of the President's *power* to act in the case of Illinois, now pending before him, has been referred to you for your opinion thereon, you will find, if you desire to consult them, my arguments in support of said power in my reviews of the Hon. Assistant Secretary's opinions, all of which reviews and opinions are contained in my supplemental report, and in my letter to the President of the 6th instant. You will also find the arguments of the Hon. Reverdy Johnson, in support of said power, in his opinion published in said supplemental report.

I am fully sensible I have not the right to appear before you, under the rules of your office, in support of my view of the question you have been called upon to determine, and I have neither a desire or wish to interfere with those rules; yet I suppose it will not be improper for me to refer you to the case of McFadon *vs.* the Exchange, (7 Cranch, 116,) in which the President "directed the Attorney General and the district attorney in the discharge of their official duties, and they obeyed his direction. He and they acted on the principle that the President had a *right to point out to them* the manner in which their different duties were to be performed."

Again invoking your early action in behalf of my State, which has been long delayed, I remain

Yours, very sincerely,

I. N. MORRIS,

Agent and Attorney for Illinois.

WASHINGTON CITY, *January* 28, 1864.

TO HIS EXCELLENCY, ABRAHAM LINCOLN,

President of the United States:

SIR:—Some three weeks ago you referred to the Attorney General a single point in the case of Illinois, for his opinion thereon. It was, I understand, as to your jurisdiction.

A few days ago I saw Judge Bates and had a conversation with him on the subject. In that conversation I spoke of the long delay Illinois had been subjected to, and respectfully desired to know how soon his opinion would be rendered. To this inquiry he made no definite answer. I then asked him if he would furnish me a copy of his opinion, when it was ready, saying, that I supposed it would not be improper for me, as agent and attorney of the State, to examine it, especially as it would be a public document. His answer to this was, that he could not furnish copies of his opinions without asking Congress to allow him additional clerks. I can, therefore, only anticipate from his remarks, which were frank, what his conclusion will be, and in doing so, I beg to assure your Excellency that I have no intention or desire to intrude upon the established usages of the Executive Department. My only object is to do justice to my State, and that much I think I ought to do. I shall, however, be very brief in what I have to say.

The Attorney General, if I rightly comprehend his views, will hold that the account of Illinois must be stated under the law of 1857—that you have the power and it is your duty to order its statement, but that you have no power to direct the *mode* or *manner* of its statement. This seems to me to be a curtailment of the executive duty "to take care that the laws be faithfully executed," unwarranted by the constitution. I admit that you are no judicial officer, no court, no accounting officer, but insist that you are clothed with all the attributes of executive authority, necessary to the enforcement of the laws, directory to yourself, or the creatures of your own appointment, who are but the *conveniences* of the Executive Department of the government.

While you are not an accounting officer, or a secretary, or a land commissioner, it does not follow that you have no power to look into the

manner in which these functionaries discharge their respestive duties. I admit you cannot perform all the duties yourself, of the various executive departments, and that it was not contemplated, in the organization of the government, you should; still this does not interfere with the constitutional obligation resting upon you to see that the laws are executed, when it is made known to you that they have not been.

Comparatively but few such cases arise in the course of an administration, and it is in just such cases that the President is required to interfere. The provision of the constitution that "the President shall take care that the laws be executed" is broad, and covers all acts coming within the jurisdiction of the Executive Department; and evidently contemplates cases were subordinates might refuse to execute the laws. The responsibility, therefore, of their execution was, by the constitution, thrown upon the President, in whom is invested this attribute of executive sovereignty.

Attorney General Cushing, in his elaborate opinion on the relation of the President to the Executive Department, (see opinions of the Attorney General, vol. 7th, pages 464, 469, 470,) says:

"In speaking of the subordination of the departments to the President, we are to understand, of course, that the several executive bureaus are included, for they are themselves subordinate to the departments under the supervision of which they are placed respectively, whether by statute or by order of the President."

Again:

"Take now the converse form of legislation, that common or most ordinary style, in which an executive act is, by law, required to be performed by a given head of department. I think here the general rule to be as already stated, that the head of department *is subject to the direction of the President.* I hold that *no head of department can lawfully perform an official act against the will of the President; and that will is, by the constitution, to govern the performance of all such acts.* If it were not thus, Congress might by statute so divide and transfer the executive power as utterly to subvert the government, and to change it into a parliamentary despotism, like that of Venice or Great Britain, with a nominal executive chief, utterly powerless, whether under the name of Doge, or King, or President, would then be of little account, so far as regards the question of the maintenance of the constitution."

If you have the power to direct the Land Commissioner to state the account of Illinois under the act of 1857, it would seem to be clear that you have an equal power to direct him *how* to state it. For the reason that if the Land Commissioner, in stating it, does not state it in compliance with the law, as you may understand it, it is as much an effectual violation of the law as if he refused to state it all. A wrongful statement of it would be no legal statement, but a statement in opposition to, and in derogation of the law, and then the law would not be executed. The power to direct the statement of the account necessarily carries with it the incident to that power. Under such a state of fact would it not be your duty to see that the law was executed? The doctrine I have laid down, but do not intend to elaborate upon, was held by Mr. Whittlesey, one of the safest and ablest Comptrollers of the Treasury the government ever had, when passing the Galphin claim for interest. In that

instance he was directed by his superior officer *how* to execute his duty, and he passed the claim as an "*administrative act*," and not his own. Numerous other cases, of a similar character, could be cited, but I will not trouble your Excellency with but one more. I refer to that of McFadon *vs.* the Exchange, (7 Cranch, 116,) in which the President "directed the Attorney General and district attorney in the discharge of their official duties, and they obeyed his direction. He and they acted on the principle that the President had a right to point out to them the MANNER in which their different duties were to be performed."

To direct the performance of an act and refuse or neglect to direct the *manner* of its performance, is to leave undone the important part of the direction. Almost every day officers in the field are directed by the Commander-in-chief, or his Secretary of War, acting under his direction, *how* and in what *particular manner* to perform their duties.

If, for instance, an accounting officer of the treasury had refused to pass a part of an account, arising under an act of Congress, say the act for compensating owners in the District of Columbia for manumitted slaves, upon the ground that too much had been paid for particular ones, or upon some other frivolous pretext, that would have been a *mode* or *manner* of discharging his duty which would not have been, and very properly too, long tolerated.

The doctrine I believe to be too well settled to require discussion, that a law which is mandatory or directory to a member of the Executive Department, imposes upon the President an obligation equally binding "to take care that it be executed," as if it were particularly mandatory or directory to himself. If it were not thus, inferior officers, not accountable to the people, could abrogate the legislative will, block the wheels of the executive power, and we would have a thousand Presidents instead of one.

A simple direction to the Land Commissioner to state the account of Illinois would virtually be a direction to him to disallow her claims, if the ruling of the Interior Department should be adopted and followed.

If every thing is to be done but to pay the State the money she claims, and her hope of receiving that is to turn to ashes on her lips, if she is to be delayed for years, and then the government is to escape from the payment of her demand, because of what I humbly conceive to be a mistaken rule of construction which the Attorney General will put upon the *executive* powers of the President, subordinating them below the powers of a mere accounting officer, she will have labored to little purpose in establishing her rights. If a *mandamus* would lie against an officer of the United States there might be less reason to call for Presidential interposition.

I hope Illinois is not to be turned back to a result which I have, from the first, admitted to exist if the appropriations for the National road are to be charged against her two per cent. fund. She would not have, however, a fear of the result of her application in the hands of any governmental officer, if she had confidence to believe he would, as she knows your legal mind will lead you to do, apply the principles of construction laid down by the Supreme Court of the United States (see 2d Cranch) in the case of the United States *vs.* Fisher, in which the court say:

"It is undoubtedly a well established principle in the exposition of statutes that every part is to be considered and the intention of the legislature extracted from the whole."

Again:

"When the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice and will have its due share of consideration."

I shall not be able to see the opinion of the Attorney General before you will act upon it, and in all probability not before it shall appear in a printed volume. I beg you to consider that fact as a justification of this communication.

Although not strictly within the scope or object of this letter, allow me to say, that I have, within a few days, received from the Hon. Frank P. Blair, after mature deliberation and examination on his part, a written communication, in which he sustains the facts and *legal deductions* contained in the letter of Hon. James S. Green, a copy of which I sent you.

I have also received a certificate from the Hon. O. M. Hatch, Secretary of State for the State of Illinois, and send it herewith for your inspection, showing that the Legislature of that State has never passed an act or resolution accepting the work done on the National road within her limits, in lieu of the two per cent. fund, or declared the track of said road a State road. In view of these facts, is it too much to ask that a liberal construction, such as the late Interior Secretary, Mr. Thompson, gave them and said they should receive, should be given to the acts of 1855 and 1857. But a rigid construction of said acts will give to Illinois the sum she claims. The only way she can be kept out of her rights is to violently drag in other enactments, with which the ones I have just named, have no connection.

Can any good reason be assigned why the whole five per cent. should be paid to Alabama and Mississippi, and a like allowance and payment be denied to Illinois?

I remain, with great respect,

Your Excellency's obedient servant,

I. N. MORRIS.

QUINCY, ILLINOIS, *November* 30, 1863.

HON. I. N. MORRIS:

DEAR SIR: My attention has recently been directed to your correspondence with the officers at Washington City for the purpose of procuring payment of two per cent. of the net proceeds of the sales of public lands in this State. And I confess I was not aware of the existence of the law under which you claim payment, until you brought it before the public.

When in the United States Senate, I, with my colleagues in both Houses of Congress, procured the passage of a special law for a similar payment of two per cent. to Missouri; but if we had noticed the *general provision* of the second section of the act of March 3, 1857, we would have relied alone upon it, without waiting the tardy and uncertain

action of Congress, and I should have felt confident in obtaining the two per cent. to which the State was justly entitled, without any further legislation. And here, I may remark, is illustrated the impropriety of connecting a *general provision*, with a *special bill*, unless the title clearly indicates its character. This provision in the act for Mississippi, in connection with the act for Alabama, on the same subject, and thereby *re-enacted*, is ample and explicit, and would have been relied upon by us if it had not escaped our observation. But although we obtained a special law for the two per cent. of Missouri, we were met under it by the officers of the United State's Treasury with the same objections and subterfuges that you have to encounter when applying for Illinois. However, I finally obtained a reference of the question to the Attorney General, who promptly decided in favor of Missouri, and the money was accordingly paid. I have no doubt the same thing would have occurred under the laws on which you rely.

These laws direct, in substance, an account to be stated with Alabama and Mississippi, of the whole *five per cent.* of the net proceeds of sales of public lands, and also to *include* the Indian reservations; and then the last section directs a similar account with *each* of the *other* states, and to *allow* and *pay* the same. Language could not be plainer. There is an account to be *stated*, *allowed* and *paid*, independent of the Indian reservations, and then, if any of these, they are to be *included*. This *inclusive part* necessarily implies something preceding, and it might be entirely stricken out of the law, and the enactment remain, both intelligible and effective, retaining the primary object of the law—the *inclusive* part being nothing but the incident. Yet the pretext of the officers would make this little incident *everything*, and render the legislation of Congress both absurd and nonsensical. I feel obliged to you for having brought this subject to light.

Very respectfully, your obedient servant,

JAMES S. GREEN.

As well as my recollection serves me, I concur in the statement of facts, and I agree in the conclusions of the above letter of Hon. James S. Green.

FRANK P. BLAIR, Jr.

Washington City, *January* 20, 1864.

United States of America, } *ss.*
State of Illinois. }

I, O. M. Hatch, Secretary of State of the State of Illinois, hereby certify that I have carefully examined the files of my office, and that I am unable to find that the Legislature of this State ever passed any law or resolution, accepting the work done upon the National road by the United States within this State, in lieu of the two per cent. fund, which said State was to have expended under the direction of Congress, in making roads leading thereto, under and by virtue of the sixth section of the act providing for her admission into the Union. I further certify that I cannot find any act or resolution passed by the Legislature of said State, declaring all, or any part, of what is or may be

claimed to be a part of said National road, lying within the limits of said State, a State road.

In testimony whereof I hereunto subscribe my name and affix the [L. S] great seal of State, at the city of Springfield, this 22d day of January, A. D. 1864.

O. M. HATCH, *Secretary of State.*

WASHINGTON, D. C., *February* 15, 1864.

To HIS EXCELLENCY, A. LINCOLN,
President of the United States:

SIR — It is now more than one year since I commenced, under your administration, the prosecution of the claim of Illinois against the United States for the two per cent. fund, and more than half of that time I have spent in Washington. Whatever of energy or zeal I had has been unceasingly bestowed upon the case of the State, and no one moment which I could turn to account, or supposed I could, has been wasted, but all the which I have urged and implored the executive officers for action. The whole business could and should have been disposed of in three weeks. But delay has followed delay, and the State has been baffled at every possible point. Each succeeding subordinate functionary into whose hands the case has fallen, except the Land Commissioner, and it has been compelled to run a long and terrible gauntlet, has thrown his arm affectionately around its neck and held it to his embrace as long as possible, and while apparently caressing it with kindness, has adroitly endeavored to stop its breath with his hand. If it is to be strangled by those whose duty it is to give it a fair legal hearing and prompt decision, as is now generally believed by the citizens of the State who are here, it is due to her and to fairness that it should be done at once. Anything is better than undue suspense.

The State has another remedy which she cannot avail herself of until that provided in the Executive Department shall have been entirely exhausted, and in her name and on her behalf I protest, as her duly appointed representative, against her sustaining further injury and loss by the non-action of government officials. Already that loss has been great, and justice to her forbids that I should longer delay to remonstrate, respectfully but earnestly, against its further augmentation. A little more delay will carry her case over another year if she is forced to seek for justice outside of executive authority. Shall she be thus treated?

I have all along insisted and believed that your Excellency would order the execution of the laws. I believe so still, and shall continue so to believe until it is otherwise made manifest.

If Congress did not, by the passage of the act of 1857, for the settlement of certain accounts between the United States and the State of Mississippi and other states, re-enact the fifth section of the act approved March 1, 1857, to enable the people of the western part of the Mississippi Territory to form a constitution and State government, which sets apart and invests the right in that State of the five per cent. arising from the sales of the public lands, and other acts, subsequently passed, connected therewith, for the payment of three and two parts of it, and

direct a similar payment of five per cent. to the other states, of which Illinois is one, it would be impossible to find legislative language which could do it.

With respect and consideration, I remain your obedient servant,

I. N. MORRIS.

Can I be permitted to see the opinion of the Attorney General after its rendition and before final action thereon? I should like to do so.

M.

Finally, after long and anxious delay, the opinion of Attorney General Bates was rendered. Through what channel it found its way to the Interior Department I never could learn. Although I had inquired for it at the General Land Office until I had become literally ashamed of asking, the first I knew about it, it was in the hands of the Interior Secretary, and had been acted on by him, though his action does not appear of record, in the face of the decision itself which declares the secretary had no jurisdiction over the question. The Commissioner of the General Land Office, following the ruling of the Interior Secretary, at once acted in the premises, and if I had reason to complain before of the non-action of government officials, I certainly had no cause to make any such complaint after the case got back from the Attorney General's office into the Interior Department. Instant dispatch was used in disposing of it in my absence and without my knowledge, and it looks very much as if there was *design* in the mode of proceeding. If such was the case it will avail nothing in the end.

The following correspondence at once transpired, subsequent to which I obtained a copy of the account, as stated, a copy of the opinion of the Attorney General, etc:

WASHINGTON CITY, *March* 30, 1864.

Honorable Commissioner of the General Land Office:

SIR — I understood, for the first time to-day, upon inquiry made of your chief clerk, Hon. Joseph Wilson, that some action had been taken in your office in regard to stating an account with the State of Illinois, of the two per cent. claimed to be due her from the proceeds of the public lands sold within her limits. Will you therefore be kind enough to furnish me, at as early a period as possible—

1. With a copy of the account, stated.
2. With a copy of the order upon which it was stated.
3. Information showing to whom the account, when stated, was delivered, and whether his Excellency, the President, made any order in the premises, and if so, what it is.

I desire this information to enable me to determine what course to adopt in the future. Permit me, however, to say that had I known, when the case of the State was returned to your office, I should have asked, in behalf of myself and associate counsel to be heard upon it, before it was finally disposed of, or the mode or manner of stating the account. This poor privilege was denied, not, I am satisfied, through

any design or agency of yours. Was the account stated in accordance with the ruling of your office, or that of the Interior Department?

Your friend and obedient servant,

I. N. MORRIS,
Agent and Attorney for Illinois.

GENERAL LAND OFFICE, *April* 1, 1864.

Hon. I. N. MORRIS, *Agent for Illinois, Present.*

SIR—In reference to the subject of your note of the 30th ultimo, yesterday, received, I have to inform you that the statement of the account in regard to the Illinois reserved two per cent. fund has not yet been consummated. When completed and finally acted upon, you shall be furnished with the desired copy of the statement in question, or of any papers on our files in the premises you may deem necessary.

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

The Attorney General's opinion is as follows, and I ask for it a careful reading, being satisfied it has not injured but strengthened the claim of the State.

ATTORNEY GENERAL'S OFFICE, *March* 8, 1864.

TO THE PRESIDENT:

SIR—I beg to be excused for the long delay which has happened in answering upon the matter which you referred to me, some time in January last, touching the claim of the State of Illinois against the United States, on account of the two per cent. fund, so called. I lost several weeks by sickness, and then business, both in the office and in the Supreme Court, which would not brook delay, compelled me to postpone the consideration of this matter until now.

The memorandum which you sent me does not, specifically, state the questions or points of law upon which you require my opinion. But, judging from a careful examination of your memorandum, and some of the papers which accompanied it, I suppose the questions intended for my consideration may be fairly stated in the following form:

Under the acts of March 2, 1855, and March 3, 1857, "the State of Illinois has applied to have the Commissioner of the General Land Office state an account between the United States and said State, and to have allowed and paid over to said State such amount as shall thus be found due. The Secretary of the Interior, to whose Department the General Land Office and the Commissioner thereof pertain, takes cognizance of the case, and disallows the claim of the State to have either payment or accounting. From this decision of the Secretary of the Interior, the State appeals to *you*, as President of the United States," and asks you to do, as President, what the statutes require to be done, by the Commissioner of the General Land Office. And so the question is—Has the State of Illinois any legal right to take such appeal, and thereby impose upon the President the legal duty to do what the law plainly requires to be done by the Commissioner, i. e., to state the account, etc.?

I am clearly of the opinion that no such appeal lies. The President is not the accountant general of the nation—is not an auditor or comptroller of accounts.

The act of March 3d, 1857, section 2, II Stat., 200, declares "That the said Commissioner shall also state an account between the United States and each of the other states, upon the same principles, and shall allow and pay," etc. By the terms of this act no powers are granted to, nor duties imposed upon, either the President or the Secretary of the Interior, but only to and upon the Commissioner of the General Land Office. And is it now to be denied that Congress has power to distribute the ministerial functions of government among the functionaries of its own creation? The practice is coeval with the government, and is in actual exercise every day. In fact the contrary theory is simply impossible, in practice, for neither the President nor any head of a Department could, by any degree of laborious industry, revise and correct all the acts of all his subordinates. And if he could, as the law now stands it would be as illegal as unwise.

Although the President cannot be substituted for all his subordinates, and required to do all their work, in any contingency, yet, doubtless, in one sense, he has a general oversight of all the officers of the government. For, by the constitution, it is his duty to "take care that the laws be faithfully executed." And, in the discharge of that duty, he will of course act according to the subject-matter and the nature of each case before him. If the party who will not execute the law be a Judge, the President cannot perform his judicial duties. All he can do is to give the proper information to the House of Representatives, who may, if it think proper, apply the remedy of impeachment. But if the offender be a ministerial officer, civil or military, the remedy is in the President's own hand, and of easy application. He has nothing to do but turn him out and fill his place with another man.

Under the act of 1857, it is the plain duty of the Commissioner of the General Land Office to state the account. I think he ought to be required to do it, for no one else, (not the Secretary of the Interior nor the President,) can do it for him.

It is no objection to stating the account, that the Commissioner thinks there is no balance in favor of the claimant, for if that be so, the fact will appear all the plainer when the account is stated. I forbear all further argument and content myself with referring you to numerous opinions of my predecessors, (as collated below,) by which the doctrines I advance are fully settled *for this office.*

The question of the President's power to interfere with the action of the accounting officers in the settlement of accounts, repeatedly came before Attorney General Wirt, and he held that the duty imposed upon the President to take care that the laws be faithfully executed, placed the officers engaged in the execution of the laws under his general superintendence, and required him to see that they did their duty faithfully, and, on their failure, to cause them to be displaced, prosecuted or impeached, according to the nature of the case. But it did not mean that he should execute the laws in person, which would be absurd and impossible; that where the laws require a particular officer by name to perform a duty, not only must he perform it, but no other officer can

lawfully do so, and were the President to perform it, so far from taking care that the laws were faithfully executed, he would be violating them himself; and he held that the President had no power to interfere with the accounting officers so long as they performed their duties faithfully. (1 Op. At. Gen., 624; ibid 636; ibid 678; ibid 706.)

Although Attorney General Taney, in Thorp's case, (2 Opinions 463,) seemed to think that where a claim had been rejected by the accounting officers, and their decision confirmed by the Secretary of War, an appeal might lie to the President, it is clear that such was not his well considered opinion. For in Grice's case, (2 Op., 481,) where the claim was rejected by the accounting officers, he declared that no appeal would lie from their decision to the President. And, in General Taylor's case, (2 Op., 507,) where the President was asked to dismiss a suit on the ground that the accounting officers had not allowed certain credits, Attorney General Taney advised him that the law contemplated no appeal to the President, and that he did not possess the power to examine into the correctness of the accounts to repair errors that the accounting officers appointed by law might have committed. Again, in Hogan's case, where the President was asked to order the allowance of certain claims against the United States, which the accounting officers had rejected, Attorney General Taney advised him that such an appeal would not lie to him, and that he could not legally interfere. These three cases undoubtedly express the authoritative opinion of that distinguished officer on this question.

To the same effect is the opinion of Attorney General Crittenden, in Pratt's case, (not printed,) and his elaborate opinion in 5 Op., 636, wherein he reviews the precedents, and reaches the conclusion that the President has no authority to interfere in the settlement of accounts on appeal to him.

In this opinion Mr. Crittenden also maintains, with great ability and learning, the rightful authority of the heads of departments to interfere "*a priori* or *a posteriori*" in the settlement of accounts of their respective departments, and this principle has been accepted by nearly all his successors, and may now be regarded as settled. It results, therefore, that a power of interference with the accounting officers exists in the heads of departments, which is not conceded to exist in the President. Although Attorney General Cushing calls this an "anomaly of relation," (6 Op., 343,) it is conceived that good reasons exist for the distinction. The rule which has thus forbidden the President's interference in the settlement of accounts by the accounting officers, has also been applied to other cases. Where an appeal was taken from the decision of the Secretary of War, approving the action of the Commissioner of Pensions, in disallowing a claim for an increase of pension, Attorney General Mason advised the President against entertaining the appeal, and, after citing the opinions of Messrs. Wirt and Taney, said that the President could not adequately perform his high constitutional duties if he were to undertake to review the decisions of subordinates on the weight or effect of evidence in cases appropriately belonging to them.

Where the state of Iowa claimed certain lands, under a grant by Congress, and a question arose as to the extent of the grant, and the proper

officers differed on that question, the President was asked to decide the question, but Attorney General Crittenden advised him that the act of Congress did not provide for or appear to intend any interposition by the President, and that his interference with the performance of the particular duties assigned by law to subordinate officers, either to correct errors or supply omissions, would, in the general, be exceedingly injudicious, if at all warrantable, and would, moreover, involve him in an endless and invidious task, occupying his whole attention, and leaving no time for higher duties. He gave the same opinion where the President was invoked to interfere on behalf of certain parties for the decision and settlement of questions arising out of a contract and purchase of lands made by them from the Seneca Indians, (5 Op., 275.)

In conclusion, I adopt the language of the Supreme Court of the United States, (1 How., 297,) as an accurate and authoritative statement of the law on the subject. "The President's duty, in general, requires his superintendence of the administration; yet this duty cannot require of him to become the administrative officer of every department and bureau, or to perform in person the numerous details incident to services which, nevertheless, he is, in a correct sense, by the constitution and laws required and expected to perform. This cannot be, first, because if it were practicable, it would be to absorb the duties and responsibilities of the various departments of the government in the personal action of the one chief executive officer. It cannot be, for the stronger reason that it is impracticable, nay, impossible."

I am, Sir, very respectfully,
Your obedient servant,
EDWARD BATES,
Attorney General.

REMARKS ON THE OPINION OF THE ATTORNEY GENERAL.

After quoting what I suppose is the language of the President's memorandum, accompanying the papers transmitted by him to the Attorney General, that officer says: "And so the question is, has the State of Illinois any legal right to take such appeal, and thereby impose upon the President the legal duty to do what the law plainly requires to be done by the Commissioner, *i. e.*, to state the account, &c. I am clearly of the opinion that no such appeal lies. The President is not the accountant general of the nation—is not an auditor or comptroller of accounts."

The learned Attorney General mistates the case, doubtless unintentionally, and then draws a conclusion from the erroneous premises. I never pretended, nor do I know of its ever being pretended, by any one, that the President was "Accountant General" of the nation, or an "Auditor," or a Comptroller, or that he was bound to make up, or personally superintend making up, the accounts of such officers. Because he is not bound to do this, the learned Attorney General assumes the ground that no appeal lies, in the case of Illinois, to the President. What I have affirmed, and what is the settled ruling of the Attorney General's office is this, that while it is wholly impracticable, nay, impossible, for the President to execute, in person, all the laws, it is, never-

theless, his solemn duty, enjoined by his oath of office, "to take care they are executed." In cases where it is made known to him that his subordinates have not executed them, he is to see that they do it, and if they fail upon direction to do it, it is his duty to turn them out, and appoint others who will execute them. In every case where he has the right to appoint and remove an officer at will, he is responsible for his conduct, and the officer is amenable to him for every dereliction of duty, and what can be a more serious one than failing to execute the laws. In cases where the tenure of the office is fixed by the constitution, such, for instance, as that of a supreme judgeship, the President is not responsible for the manner in which the incumbent performs his duty, for the reason he has no power over him. Such functionary belongs to a different and co-ordinate department of the government, and his case is not to be confounded with one, where an executive ministerial officer, who is but the *convenience* of the President, fails to discharge his duty. It will hardly be seriously insisted, I apprehend, by the learned Attorney General, that such an officer is above the power of the President to correct his errors and require the performance of his omissions of duty. What I have claimed is, that subordinate executive officers have not executed the laws bearing upon the two per cent. road fund to the State, as the President has interpreted them, and that hence it is incumbent on him to see that they do it, for the reason that he is bound to "take care that the laws be faithfully executed," as HE understands them, and not as they may be interpreted by his inferiors or clerks. Somehow or other there seems to be a strange propensity in some of the departments at Washington, to make up false issues with the State, and then try her cause upon them. I put it to the learned Attorney General to say whether, if the President is satisfied that one of his subordinate officers has not executed (I will state the case direct) the laws requiring the payment to Illinois of the sum she claims, it is not his constitutional duty to direct those laws to be fulfilled. To attempt to relieve him from that duty by a mere dash of the pen, that he is not "Accountant General" of the nation, or an "Auditor," or "Comptroller," is hardly worthy of the great reputation of the learned Attorney General. I fear that if his legal fame should rest upon the assumption that, because the President is neither of these things, he is not therefore bound "to take care that the laws are executed," it would soon disappear from among the illustrious expounders of constitutional law.

The very authorities which the learned Attorney General himself cites, are against him. They sustain the real, and are irrelevant to his hypothetical case. Instance the quotation at the conclusion of his opinions, from the decision of the supreme court of the United States, (1 How., 297,) wherein the court say, "The President's duty, in general, requires his superintendence of the administration; yet this duty cannot require of him to become the administrative officer of every department and bureau, or to perform, in person, the numerous details incident to services, which, nevertheless, he is, in a correct sense, by the constitution and laws required and expected to perform."

The doctrine here laid down by the court is undoubtedly correct. It is that in a "correct sense" the President is required by the "*constitution* and *laws*" to become the administrative officer of every department

and bureau, yet it is impossible for him to perform, in person, the numerous details incident to services which are required of him. The employment of others is a matter of convenience, and to facilitate the discharge of public business and does not and cannot divest the President of any part of his attribute of executive power and responsibility. I have never asked the President to state in person, the account of Illinois, but I have asked him to see that the laws were executed. I have asked him to direct his subordinates to execute them. If he is made conscious that an account has been wrongfully stated, it is plain that that is no legal statement of it, and consequently no statement. To state an account is to comply with the law. A wrongful statement is no statement.

The supreme court say, in their opinion quoted from by the learned Attorney General, "the President's duty, in general, requires his superintendence of the administration."

What does this mean but that he is required to see that his subordinates properly execute the laws. This is all the State has ever asked of him, and all she desires him to do.

The learned Attorney General, in his opinion, lays down the true ground. I should have had no cause to complain of his action if he had let the case of the State alone as I presented it, and as it is, and not changed it so as to place it in juxtaposition with his doctrine. He admits, while insisting properly enough, that the President cannot be substituted for all his subordinates and required to do all their work, that he has, "in one sense, a general oversight of all the officers of the government, and that it his duty to turn out a ministerial officer who fails to execute the laws, and put one in his place who will execute them."

If the President believes that the laws relating to the payment of the two per cent. to Illinois have been executed, all he has to do is to say so. But it appears he does not believe it. His opinion of them is so clear that he did not even refer to the learned Attorney General, the question of their exposition—only the one of jurisdiction. Had he not been entirely satisfied on the point of construction, he undoubtedly would have called for the opinion of the learned Attorney General upon it. The Interior Department never asked for it, or manifested a willingness to risk the case upon it. Occupying the position of a suitor, I had no right to call for it. Only the government could demand or require it, and that appears to have preferred the opinion of subordinates on the merits of the question.

But I will not, in this report, enlarge the argument in support of the views I have here expressed. They have heretofore been sustained by citations to judicial decisions and the opinions of Attorney General's, too numerous and overwhelming to be overthrown. To evade the real issue is to yield the question of right to the State.

There is one additional argument, however, used by the learned Attorney General, to show that the State had no right to carry her cause to the President, which it is, perhaps, my duty to notice briefly. He assumes that because the act of Congress, approved March 3d, 1857, entitled, "An act to settle certain accounts between the United States and the State of Mississippi and other States," is *directory* to the Land Commissioner, that, therefore, it is no concern of the President to see that it

is executed. And yet the learned Attorney General says, in his opinion, "Under the act of 1857, it is the plain duty of the Commissioner of the General Land Office to state the account. I think he ought to be required to state it."

Required by whom? Who could require him to state it but the President, and if he could require him to state the account, could he not require him to state it correctly? If he has jurisdiction over the question at all, he has it over all, and not over a part of it. Some laws the President is required to execute in person, others are directed to his subordinates. The latter class he is required to see executed. The doctrine has long been settled by the very highest authorities, (see Attorney General's opinions,) that a law imposing a duty on a ministerial officer imposes a duty on the President to see that he performs it. The President could not, if he would, escape from the obligation.

It will be seen by an examination of the learned Attorney General's opinion, that he has decided two important points in favor of the State, and sustained the views I have uniformly expressed upon them, and overruled those expressed by the Interior Secretary and the Land Commissioner. I refer to his ruling that the act of 1857 embraces the per cent. on the public lands as well as the per cent. on the Indian reservations, and requiring the Commissioner to state the account of Illinois on both. He also decides that the Interior Secretary has nothing to do with the case.

But one other question remains undisposed of, and that is how shall that account be stated? The following is a copy of the statement of it, made out in the General Land Office, under the supervision of the Interior Secretary, and the question is, is it in compliance with the law? I have, in my previous reports, so fully argued this point that it is believed to be wholly unnecessary to say but a word or so upon it now, especially in view of the fact that I shall soon discuss it fully before the First Comptroller of the Treasury.

There is no pretense that the acts passed for the benefit of Alabama and Mississippi, which will be found in my original report, pages 6 and 7, contemplated that any offset should be used or charged against the accounts required to be stated, other than the actual payments, in money, before that time made. This is not only apparent from the language of the acts themselves, but the conclusion is placed beyond all doubt when it is recollected there were no other kind of offsets to apply. The acts simply provided that the two and three per cent. accounts of Alabama and Mississippi should be restated, and if any part of either, upon such restatement, remained unpaid, it should be paid, and five per cent. on the Indian reservations included therein. It seems to me that nothing can be plainer. Alabama and Mississippi wanted just that legislation and nothing more. They wanted and asked for the five per cent. on the Indian reservations within their respective limits, and whatever remained unpaid of the five per cent. arising from the sales of the public lands. They were not contemplating, nor was Congress, expenditures on the Cumberland road at the time said laws were passed, and there is no man at all acquainted with the history and character of the legislation, silly enough to believe it. The accounts are required to be stated "for the *purpose* of ascertaining what sum or sums of money

are due to said states, heretofore unsettled," etc., that is, heretofore *unpaid*, and to include the five per cent. on Indian reservations therein, and pay the sum thus found to be unpaid or "*unsettled.*"

The second section of the Mississippi act enjoins upon the Commissioner of the General Land Office to "also state an account between the United States and each of the other states, upon the same principles," that is, in the same way, mode or manner, "and allow and pay to each state the amount that shall thus be found due, estimating all lands and permanent reservations at $1,25 per acre." If the amount thus "found due" was not to be "allowed and paid," where the necessity of requiring the account to be stated, unless the "other states" were to be placed upon an equal footing with Alabama and Mississippi, and the same principle of payment was to be observed towards them that was to be observed towards those states, the said second section of the act of March 3d, 1857, is without object and without meaning, and it is hardly to be presumed that the committee on Public Lands in the Senate would have added it to the bill, except for a wise and just purpose.

But the Attorney General having determined that the account of Illinois must be stated under the act of 1857, disposes of the whole question, for there can be no doubt of the "principles" upon which it must be stated. The conclusion therefore is, that the expenditures on the Cumberland road were resorted to as a mere departmental evasion.

GENERAL LAND OFFICE, *April* 2, 1864.

Hon. I. N. MORRIS, *Agent and Att'y for Illinois, Present:*

SIR—Referring to my letter of the 1st inst., in reply to yours of the 30th ult., I now inclose a copy of the statement of the Illinois reserved two per cent. fund. The statement has been sent to the Hon. 1st Comptroller of the Treasury. Copies of any papers on our files, in regard to this, which you may desire, will be furnished on your application.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

[Report No. 17,984.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFCE, *March* 17, 1864.

SIR—I have examined as to the condition of the reserved two per cent. fund on the sales of the public lands within the limits of the State of Illinois, from January 1st, 1819, to December 31st, 1860, in view of the provisions of the act of Congress approved April 18, 1818, of the act approved 3d March, 1857, "to settle certain accounts between the United States and the state of Mississippi and other states," and find as follows, viz:

That two per cent. on the net proceeds, viz: $23,705,984 66 of sales of the public lands within said State, during the period aforesaid, amounts to $474,119 69

That two per cent. upon the aggregate of 41,754 59–100 acres of Indian reserves, amounting to $52,193 24, valued at $1,25 per acre, under said act of 1857, amounts to 1,043 86

$475,163 55

This sum, $475,163 55, by the express terms of the 3d stipulation in the 5th section of the Illinois Enabling Act of April 18, 1818, being reserved to be disbursed "under the direction of Congress," in "making roads leading to the State."

I also find that the said two per cent. fund stands chargeable in this connection on account of the construction of the Cumberland road, under the acts of 31st May, 1830, 2d March, 1831, 3d July, 1832, 2d March, 1833, 24th June, 1834, 2d July, 1836, 2d March, 1837, and 25th May, 1838, (U. S. S., Vol. 4, pages 427, 469, 557, 649, 680, Vol. 5, pages 71, 195, and 228,) and according to the official certificate A, herewith, bearing date March 15th, 1864, from the acting Register of the Treasury, in the sum of $739,879 99

Showing not only that there is no balance due by the United States, on account of said fund, but that, on the other hand, the sum of 264,716 44

has been expended "under the direction of Congress" on this account, in excess of the aforesaid reserved two per cent. fund of $475,163 55

[There have been no net proceeds since January 1st, 1861, the incidental expenses and repayments having been largely in excess of the receipts from sales.]

As appears from the foregoing, and the certificate of the acting Register of the Treasury, which is respectfully submitted to the First Comptroller of the Treasury for his action and decision thereon.

J. M. EDMUNDS, *Commissioner.*

Hon. R. W. TAYLOR, *First Compt. of the Treasury.*

[A.]

Statement, showing the payments and repayments on account of the construction of the Cumberland road, in the State of Illinois:

Payments in	1830	$12,155 00
"	1831	33,361 00
"	1832	87,500 00
"	1833	40,000 00
"	1834	51,752 03
"	1835	109,000 00

Payments in	1836		42,231 97
"	1837		58,452 66
"	1838		84,000 00
"	1839		128,520 00
"	1840		99,027 34
			$746,000 00
Repayments in	1842	$4,700 00	
"	1845	1,420 01	
			6,120 01
			$739,879 99

R. SOLGER, *Acting Register.*

TREASURY DEPARTMENT,
REGISTER'S OFFICE, *March 15th*, 1864.

The Land Commissioner says, in the foregoing account, "I also find that the said two per cent. stands chargeable in this connection, on account of the construction of the Cumberland road, under the acts of the 31st of May, 1830, 2nd of March, 1831, etc., and according to the official certificate 'A,' herewith, bearing date March 15, 1864, from the acting Register in the Treasury, in the sum of $739,879 99." This finding is not upon any claim or offset existing in his office, the Commissioner informs us, but is based upon the "official certificate" of the acting Register in the treasury. Denying the right of the Interior Department to act officially on any matter in the Treasury Department, and properly under its control and disposal, let me ask, without discussing the question of jurisdiction, if the statement of the acting Register referred to, bears out and justifies the Commissioner in making the charge he did against the State. The Commissioner informs us that he made that charge "according" (to use his own word) to that certificate.

Now, what is that certificate? The caption of it reads as follows:

"Statement showing the payments and repayments on account of the construction of the Cumberland road, in the State of Illinois."

There is not a word in the certificate showing that a single dollar of the amount expended on the Cumberland road, within the limits of Illinois, has ever been charged against the two per cent. fund due the State for road purposes; and yet the Interior Department *assumes* the responsibility, without authority of law, and by encroaching upon the rights of the Treasury Department, to direct the charge to be made! All there is in the statement of the acting Register is the amount of expenditures on the Cumberland road for a period of ten years, within the limits of Illinois, based upon reports of engineers filed in the Treasury Department, or rather, stowed away there. This information I have had in my possession since 1857, when I commenced the prosecution of the claim of the State; and I am, I believe, familiar with its bearing thereon, as I have had occasion to discuss the matter pretty fully heretofore—not for the reason it had any legal connection with the demand, for it has never been so treated in the Treasury Department,

but because the Interior Secretary was indicating a purpose to rely upon it as a dernier resort against the State, when he should be driven, as he was by the opinion of the Attorney General, from his other grounds.

Understanding the utter fallacy of the pretended offset against the claim of the State, and desiring to bring out the facts fully, I prepared the following resolution, which I handed to the Hon. Wm. R. Morrison, who introduced it into and procured its passage through the House of Representatives:

"*Resolved*, That the Secretary of the Treasury be, and he hereby is, requested to furnish to this House, at as early a day as possible, information showing—

1. The amount received into the Treasury of the United States of the two per cent. fund arising from the net proceeds of the sales of public lands made in the State of Illinois since January 1st, 1819, and reserved in her enabling act for road purposes—giving the dates from time to time when it was so received, and the respective amounts of each payment opposite said dates.

2. Whether anything is charged in the Treasury Department against said fund, or any offsets exist against it there; and if so, when and how did said charges occur, or were said offsets made, and upon what basis; stating particularly the amounts and dates of said charges or offsets, and the respective times, mode or manner in which said two per cent. fund was expended, and where, if at all, and the evidence of such expenditure, and the authority for it."

SECRETARY CHASE'S REPORT.

TREASURY DEPARTMENT, *May* 6, 1864.

SIR: I have the honor to acknowledge the receipt of a resolution of the House of Representatives, under date of the 2nd instant, requesting me to furnish information showing the amount received into the Treasury of the two per cent. fund arising from the net proceeds of the sales of the public lands in Illinois since January 1, 1819, and reserved in her enabling act for road purposes; and whether anything is charged in this department against said fund, or any offsets exist against it.

The resolution was referred to the Register of the Treasury, who reports that the books of his office do not show any payment made into the Treasury on account of the fund above referred to since January 1, 1819. He suggests that the records of the Land Office would probably show all the facts to which the resolution refers.

I am, very respectfully,

S. P. CHASE,
Secretary of the Treasury.

Hon. SCHUYLER COLFAX,
Speaker of the House of Representatives.

WASHINGTON, *May* —, 1864.

Hon. S. P. CHASE,
Secretary of the Treasury:

SIR: Your report on the two per cent. fund of Illinois, transmitted to the House of Representatives in response to its resolution of the 2nd inst., is before me. If you will carefully re-examine the subject, I think you will come to the conclusion that you have not fully complied with the request the House made. The books of the Treasury must certainly show the dates when and amounts received from the public lands sold in the State of Illinois since January 1, 1819, and paid into your Department from time to time. Two per cent. upon those amounts will be the amount of the road fund to which said State is entitled. The Register of the Treasury must therefore be mistaken when he states the books of his office do not show any payment made into the Treasury on account of said fund. The second part of the resolution you have made no reply to. It is in these words: "Whether anything is charged in the Treasury Department against said fund, or any offsets exist against it there, and if so, when and how did said offsets or charges occur, and were the same made, and upon what basis—stating particularly the amounts and dates of said charges or offsets, and the respective times or manner in which said two per cent. fund was expended, and where, if at all, and the evidence of such expenditure, and the authority for it."

I hope, sir, you will oblige the State of Illinois, and myself, by furnishing to the House, as soon as possible, an additional and fuller report on the subject. I am apprised of the nature and character of the information which the Land Department can furnish.

Very respectfully,

WM. R. MORRISON.

TREASURY DEPARTMENT, *June* 2, 1864.

SIR: I have received your letter of the 23rd ult., asking for further information than that contained in my letter of May 6th, in reply to a resolution of the House of Representatives of May 2, inquiring in regard to "the amount received into the treasury of the United States of the two per cent. fund arising from the net proceeds of the sales of the public lands made in the State of Illinois, since January 1, 1819."

The books of the Register of the Treasury do, as you suggest, show the amounts received into the Treasury from the public lands sold in the State of Illinois since January 1, 1819. A table is herewith transmitted, showing the receipts for each year, up to the present time, since 1818. The books of the Department do not, however, show anything in regard to such a fund as that referred to in the resolution, either in the way of receipts, or of charges or offsets against it.

I am, very respectfully,

S. P. CHASE,
Secretary of the Treasury.

Hon. WM. R. MORRISON,
House of Representatives.

Statement of Moneys received into the Treasury of the United States from the sale of Public Lands in the State of Illinois.

Amount received during fiscal year	1819	$299,461 58
" " "	1820	134,355 15
" " "	1821	75,595 19
" " "	1822	61,216 82
" " "	1823	47,600 34
" " "	1824	74,669 37
" " "	1825	50,784 49
" " "	1826	108,341 14
" " "	1827	50,717 52
" " "	1828	88,161 80
" " "	1829	198,609 72
" " "	1830	396,204 31
" " "	1831	375,260 27
" " "	1832	228,292 69
" " "	1833	374,138 51
" " "	1834	402,470 68
" " "	1835	2,461,125 03
" " "	1836	3,705,013 93
" " "	1837	1,075,239 73
" " "	1838	818,923 62
" " "	1839	1,457,955 90
" " "	1840	597,223 61
" " "	1841	326,722 20
" " "	1842	550,071 97
" " "	1843	258,463 49
" " "	1844	468,651 93
" " "	1845	530,982 98
" " "	1846	659,519 12
" " "	1847	546,929 03
" " "	1848	491,875 77
" " "	1849	268,446 49
" " "	1850	373,340 42
" " "	1851	368,414 32
" " "	1852	315,633 21
" " "	1853	719,722 16
" " "	1854	1,671,763 28
" " "	1855	962,065 88
" " "	1856	859,544 46
" " "	1857	356,169 26
" " "	1858	51,615 62
" " "	1859	7,960 53
" " "	1860	13,050 36
" " "	1861	11,432 29
" " "	1862	1,029 59
" " "	1863	3,047 28
Total		$22,897,813 04

TREASURY DEPARTMENT, REGISTER'S OFFICE,
June 1st, 1864.

L. E. CHITTENDEN, *Register.*

As early as September, 1863, Mr. Solger, the Acting Register in the Treasury, furnished me with the following certificate, which will be found published in my supplemental report:

TREASURY DEPARTMENT, REGISTER'S OFFICE,
September 26, 1863.

I do hereby certify that there is no account on the books of this office in relation to the two per cent. fund with the State of Illinois. No sum has been credited to said State on account of said fund, nor has there ever been any amount charged against it in this office.

R. SOLGER,
Acting Register.

After this superabundant evidence that there is nothing charged in the Treasury Department against the two per cent. fund of the State, it will appear incredible that the Interior Department should direct such a forced construction to be put upon the statement of the Acting Register accompanying the account made out against her.

That I should feel indignant at so great a wrong upon the rights of my State is not a matter of suprise. With a view of showing the absurdity of the Interior Secretary's action, I addressed him, or rather his assistant, a communication, of which the following is a copy. I deemed it my duty to the State to do so.

WASHINGTON CITY, *April* 4, 1864.

HON. WM. S. OTTO, *Assistant Interior Secretary :*

SIR:—I have just been furnished by the Commissioner of the General Land Office with a copy of an account, which passed under the supervision of the Interior Department, and was made up in compliance with its ruling of the two per cent. fund claimed to be due to the State of Illinois, under the act of the third of March, 1857, providing for the settlement of certain accounts between the United States and the State of Mississippi and other States. That account shows the amount of said fund to be $475,163 55, and there is charged against it $739,879 99, (you say, in your opinion, under date of August 31st, 1863, that the amount appropriated for the road in that State (Illinois) is $606,000, and now you put it at $739,879 99, thus largely increasing it,) leaving a balance against the State of $264,716 44, which you have affirmed she will be compelled to pay.

It is truly unfortunate for me, as well as my State, that after having labored for years to promote her interest I should bring her out in debt! I suppose I ought to be accountable to her in damages.

While, however, Illinois, has been thus unfortunate, a very cheering and happy result has accrued to the General Government, at this moment of her financial distress. You have all along insisted, and if you had not the facts would not thereby be changed, that Ohio and Indiana stood in the *precise relation* to the act of 1857 that Illinois does, and that if she received the two per cent. they were equally entitled to it. This being the case, each is, of course, indebted to the General Government for the sums expended on the National road within their respective limits, over and above the two per cent. fund arising from the public lands. This will show an indebtedness on the part of Ohio to the United States of nearly two million of dollars, and of Indiana of nearly one million, and certainly your high sense of justice, propriety and rigid

impartiality will not allow you to claim the excess from Illinois and not from the other States named. It will be no excuse that those States (Ohio and Indiana) have not asked their accounts to be made out. Your duty, as a faithful and upright public officer, requires you to make them out on the *same principle* you applied to Illinois in making up her account, and in the event the sums not found due are not paid on presentation, which I presume will be the case with your own State at least, you should institute suits for the recovery of the several amounts. Illinois will meet such a suit in any court you may select, and at any time that will suit your convenience, and I pledge her honor that she will file no technical pleas to your declaration, but meet the question on the broad ground of merit. Can you say that she has been thus dealt with?

Information found its way promtly, from your department, over the telegraphic wires, last August, when you decided the case of Illinois against her, that the decision applied equally to Ohio and Indiana, your own State, and this was heralded as conclusive evidence of the astonishing economy and watchfulness of the Interior Office over the public coffers, and convincing proof of your moral courage and unbiased judgment, for if you had decided otherwise than you did, you would have benefited Indiana as well as Illinois. Now that the case being altered I hope it will not alter the case, but that you will proceed against Indiana, make out her account, and collect it, as you propose to do with Illinois. I feel quite sure you will not allow any feeling of State partiality or delicacy to induce you to pause in the discharge of this high duty as a government functionary. I shall anticipate for you the most favorable result.

Inasmuch, however, as the discovery would never have been made of the indebtedness of Ohio, Indiana and Illinois to the General Government of a sum amounting in the aggregate to nearly three millions of dollars, but for my labors, would it be anything but fair for the United States (pardon the suggestion) to pay me a reasonable fee therefor. I see no other way of making myself whole, and will leave the disposition of the matter to the known liberality of your department, not being disposed to present a formal bill.

I am only astonished that while it is now claimed Illinois owes the United States so large a sum, you should have paid me, for her, $1,565, so late as September last, on her Indian reservations. That, however, was, doubtless, an oversight, and you will, of course, include the amount in your account as paid by mistake.

Being profoundly grateful that, while I have injured my own State I have at least been fortunate enough to add a claim, covering such a large sum, to the National coffers; and believing also that your promptness in the discharge of your official duties, of which I have had the most abundant evidence, will prompt you at once to collect the same, I congratulate the country upon the auspicious event.

With the view that Congress may be apprised of the fact that such a large amount is thus unexpectedly to come soon into the treasury, thereby lessening the necessity for raising revenue, and likewise with the view of conveying early information to Ohio, Indiana and Illinois of the respective sums they will be required to pay over to the United States, I

shall publish a copy of this communication in advance of my report to the Governor of my State.

With great consideration, I remain, sir,

Your obedient servant,

I. N. MORRIS,

Agent and Attorney for Illinois.

P. S. You certainly will not insist that Indiana is equally entitled to the benefits of the act of 1857 with Illinois, and she not be equally liable with her to pay to the General Government the amount expended over it on the National road within her limits. You stood ready to take for your own State that fund if Illinois received it, and I suppose are equally ready to make her pay back the overplus.

I. N. MORRIS.

THE PRESIDENT'S VIEWS.

The following is a copy of a note, addressed by the President to the Interior Secretary, at the time of transmitting to that officer the papers pertaining to the matter which I submitted to his Excellency on behalf of the State. While his Excellency expresses his own view of the law clearly, he very properly did not feel justified in giving an instruction to the Secretary, in advance, to adopt his construction.

HON. INTERIOR SECRETARY:

Illinois has again presented her claim for the two per cent. I do not think it very gracious in her to do so at this time of our National troubles. My opinion of the law has undergone no change. I think the law is with the State. I therefore desire you to take up the case and act upon it as you may think the law is.

A. LINCOLN.

LETTER OF HON. P. B. FOUKE.

WASHINGTON CITY, *February* 20, 1864.

DEAR SIR—In reply to your inquiry, I will state that I have examined your report on the two per cent. fund due from the United States to the State of Illinois, submitted to Governor Yates in April, 1863, and particularly that part of it in which you refer, on the 20th and 21st pages, to an interview I had with the President, and what was said between us on the subject at that interview, held on the 23d of March, 1863, when I read to him your written statement, bearing date March 19, 1863, and I fully indorse and sustain you in all the facts which you have presented. They transpired as you represent them. The President stated to me what you say he did, and left no doubt on my mind that Illinois was entitled to the money she claimed, according to his view of the laws relating thereto.

I will also state that after my interview with the President, I had another with the Hon. John P. Usher, Secretary of the Interior, who treated me with great courtesy and kindness, which terminated by his leaving the impression on my mind that his view of the laws upon which are based the claim of Illinois, were the same as those which the President had expressed to me.

Yours, very truly, P. B. FOUKE.

HON. I. N. MORRIS.

The same impression left by Judge Usher, the Interior Secretary, on the mind of Mr. Fouke, he left on my mind at more than one interview, and he has also left the same impression on the minds of others. There is no doubt that his legal opinion is that the law is with the State. Hence he threw the whole responsibility of resisting the claim upon his assistant, while he stood in the back ground himself. It is a most significant fact that no principal officer at Washington has been willing to stake his legal reputation on a decision against the State. Why did not the Interior Secretary meet the question himself, and not put his assistant between him and Illinois? The reason is obvious.

One statement in my report referred to by Col. Fouke, in his letter, is as follows:

"He, (meaning the President) also said to Col. Fouke that he had talked with Mr. Usher, his Secretary of the Interior, on the subject, and that his Secretary entertained precisely the same view of the laws upon which the claim of the State is based as he himself did, that he, the Secretary, had so said to him."

PROTEST AND PETITION FOR RE-HEARING.

WASHINGTON CITY, *April* 4, 1864.

Hon. J. M. EDMUNDS, *Com'r Gen. Land Office:*

SIR—I have to-day received from you a copy of the statement of an account made out in your office, and subjected to the supervision of the Interior Department, of the two per cent. fund arising from the net proceeds of the sales of the public lands in the State of Illinois, claimed by me as the agent and attorney of said State to be due and payable to her under the provisions of an act approved March 3, 1857, providing for the settlement of certain accounts between the United States and the State of Mississippi and other states.

You give the gross amount of said two per cent. fund at $475,163 55, and charge against it $739,879 99, on account of alledged expenditures on the Cumberland road—thus showing a balance against the State of $264,716 44.

To the account thus stated, I avail myself of the immediate occasion of its receipt to enter, in the name of Illinois, her deliberate and solemn protest, and to affirm and deny, in her behalf, that she is bound or concluded thereby, for the following among other reasons:

Firstly—Because said account is not stated, as said act of 1857, requires, but in contravention thereof in this, that the said act requires the said two per cent. to be "stated, allowed and paid," and does not authorize or allow the said alledged expenditures on the National road to be charged against it or any off-set to be made on account of said expenditures on said road or otherwise; and also in this, that said two per cent. was never expended, or any part thereof, by Congress, as trustee, in the mode or manner required by the conditions of the trust reposed by the State in that body by the terms of the compact between her and the general government.

Secondly—Because said account does not give the dates, places or particulars, when, where or how said fund was expended, so that it can

be determined with any accuracy that it was expended in conformity with the trust Congress held.

Thirdly — Because said account, as stated, is vague and uncertain, oppressive and unjust to the State of Illinois, and wholly unauthorized by any law.

Fourthly — Because said account was hurriedly made up, without giving the State an opportunity to be heard on the rule or principle which should have been adopted and followed in stating it.

All other exceptions to said account, as made up, are reserved by the State and excepted to.

I. N. MORRIS,
Agent and Attorney for Illinois.

GENERAL LAND OFFICE, *April* 4, 1864.

HON. I. N. MORRIS, *Agent and Attorney for Illinois, Present:*

SIR — Your protest of this date against the form adopted in stating the Illinois reserved two per cent. fund has been received and placed on file. Herewith I inclose a copy of any letter of this date to the First Comptroller, transmitting a copy of your letter for a re-hearing.

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

WASHINGTON CITY, *April* 4, 1864.

HON. JAMES M. EDMUNDS, *Commissioner General Land Office:*

SIR — In behalf of the State of Illinois, I respectfully petition your Honor for a re-hearing in the matter of the application of said State for the payment of the two per cent. arising from the net proceeds of the sales of the public lands, made within her limits, since January 1, 1819, reserved to be expended by Congress, as trustee, in the compact between her and the general government, in the construction of roads leading to said State, the account of which has been stated in a manner unauthorized, as she claims, by law, and as she hopes to establish or make manifest if a re-hearing is granted.

I. N. MORRIS,
Agent and Attorney for said State of Illinois.

GENERAL LAND OFFICE, *April* 4, 1864.

HON. R. W. TAYLOR, *First Comptroller of the Treasury:*

SIR — I inclose herewith a copy of a letter received this day from the Hon. I. N. Morris, agent and attorney for Illinois, asking for a re-hearing in the case of the Illinois reserved two per cent. fund, and he verbally requested that no action be taken thereon at the present time.

Very respectfully, your obedient servant,

(Signed) J. M. EDMUNDS, *Commissioner.*

After submitting the protest and petition for re-hearing, I had personal interviews with the Land Commissioner and First Comptroller of the Treasury, each of whom was very courteous, and kindly consented to allow me to submit my arguments at such time as was convenient. I therefore postponed the further prosecution of the claim until this

winter. In two or three weeks I shall again repair to Washington and renew my labors. The comptroller has the power to review the account, as stated, and to change it as his mind may suggest is right. There must at some period not distant, be a termination to technical pleas, and then the State will obtain her rights, and substantial justice will be done.

I cannot close this report without renewing the expression of my continued confidence in the determination on the part of the President to see that the State is fairly dealt with, and without also expressing my acknowledgments for the personal kindness and respect with which he has uniformly treated me.

All of which is respectfully submitted. I. N. MORRIS.

QUINCY, *December* 24, 1864.

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